

**ETHICAL PRACTICES BOARD**

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

Issued to:

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**RE: Campaign Expenditure Limits**

**ADVISORY OPINION #182**

**SUMMARY**

182. Betsey Whitbeck, Dee Long's opponent in the November 8, 1994, general election was nominated for the office of state representative in District 60A by nominating petition dated July 15, 1994, as Independent. The provisions in Minn. Stat. § 10A.25, which govern when a candidate is no longer bound by expenditure limits apply only with respect to an opponent who is a candidate of a major political party. Because Dee Long's opponent was nominated by petition as Independent and is not the nominee of a major political party, Dee Long will continue to be bound by the spending limits in Minn. Stat. §§ 10A.25 and 10A.324, subd. 1(c).

**FACTS**

As legal counsel for Dee Long, the incumbent candidate for re-election to the Minnesota House of Representatives from District 60A, you request an advisory opinion from the Ethical Practices Board based on the following facts, assumptions, and exhibits supplied:

1. Representative Long's opponent in the November 8, 1994, general election is Betsey Whitbeck.
2. On or about July 26, 1994, Ms. Whitbeck was unanimously endorsed for election by the Independent-Republican party. Exhibit A.
3. Ms. Whitbeck has identified herself as an Independent-Republican since at least January 4, 1991. Exhibit B.
4. Ms. Whitbeck's campaign committee includes the Independent-Republican chair from senate district 60 as her literature drop chair, and the chair of her campaign is former Republican Attorney General Douglas Head. Exhibit C.
5. Representative Long has signed and filed with the Board an agreement to be

bound by the statutory spending limits as set forth in Minn. Stat. § 10A.25. However, the spending limits imposed by Minn. Stat. § 10A.25 apply only to candidates whose major political party opponents agree to be bound by the limits and who themselves agree to be bound by the limits as a condition to receiving a public subsidy for their campaigns. Minn. Stat. § 10A.25, subd. 10(a).

6. Ms. Whitbeck has not filed an agreement with the Board to be bound by statutory spending limits even though she is otherwise eligible to receive a public subsidy. Exhibit D.

### QUESTION ONE

Based on the foregoing facts, assumptions, and applicable law, is Representative Long bound by the spending limits in Minn. Stat. §§ 10A.25 and 10A.324, subd. 1(c)?

### OPINION

Yes. Representative Long's opponent in the November 8, 1994, general election, Betsey Whitbeck, was nominated for the office of state representative in District 60A as Independent by nominating petition dated July 15, 1994, according to a copy of Ms. Whitbeck's Minnesota Affidavit of Candidacy submitted to the Ethical Practices Board by the Hennepin County filing officer under Minn. Stat. § 10A.09, subd. 2 (1992). The registration and statement of organization of a principal campaign committee, Friends of Betsey Whitbeck, received in the Board office on April 6, 1994, disclosed Ms. Whitbeck's party affiliation: Independent. The spending limits in Minn. Stat. §§ 10A.25 and 10A.324, subd. 1(c), apply to Representative Long because her opponent in the November 8, 1994, general election was nominated by petition as Independent and, therefore, is not the nominee of a major political party. Minn. Stat. § 10A.25, subd. 10 (1992). The Board reaffirms Advisory Opinion #144 issued June 3, 1994.

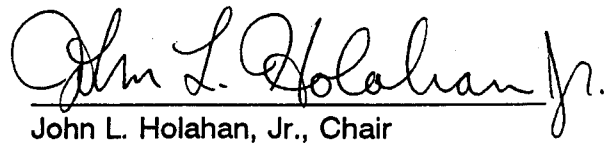
### QUESTION TWO

Is Representative Long eligible to receive or list Ms. Whitbeck's share of the general account public subsidy under Minn. Stat. §§ 10A.25, subd. 10(b), and 10A.31?

### OPINION

No. See response to Question One, above.

Issued: 10-29-1994

  
John L. Holahan, Jr., Chair

## PERTINENT STATUTES

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 under federal laws. The term candidate shall also include an individual who seeks nomination or election to supreme court, court of appeals, or district court judgeships of the state. 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, or has given implicit or explicit consent for any other person to receive contributions or make expenditures in excess of \$100, for the purpose of bringing about the individual's nomination or election. A candidate remains a candidate until the candidate's principal campaign committee is dissolved as provided in section 10A.24.

Minn. Stat. § 10A.09 STATEMENTS OF ECONOMIC INTEREST provides:

Subdivision 1. **Time for filing.** . . . [A]n individual shall file a statement of economic interest with the Board:

...  
(2) within 14 days after filing an affidavit of candidacy or petition to appear on the ballot for an elective public office...

...  
Subd. 2. **Notification.** . . . [T]he appropriate county auditor, upon receiving an affidavit of candidacy or petition to appear on the ballot from an individual required by this section to file a statement of economic interest, . . . shall notify the Board of the name of the individual required to file a statement and the date of the affidavit, petition, or nomination.

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

...  
Subd. 10. **Effect of opponent's agreement.** (a) The expenditure limits imposed by this section apply only to candidates whose major party opponents agree to be bound by the limits as a condition of receiving a public subsidy for their campaigns.

(b) A candidate who agrees to be bound by the limits and receives a public subsidy, who has an opponent who: (1) is a candidate of a major political party; and (2) does not agree to be bound by the limits but is otherwise eligible to receive a public subsidy:

(i) is no longer bound by the limits, including those in section 10A.324, subdivision 1, paragraph (c);

(ii) is eligible to receive a public subsidy; and

(iii) also receives, or shares equally with any other candidate who agrees to be bound by the limits, the opponent's share of the general account public subsidy under section 10A.31.

For purposes of this subdivision, "otherwise eligible to receive a public subsidy" means that a candidate meets the requirements of sections 10A.31, 10A.315, 10A.321, and 10A.322, but does not mean that the candidate has filed an affidavit of matching funds under section 10A.323.

### **SUMMARY OF ADVISORY OPINION #144**

A candidate who has agreed to be bound by spending limits must abide by spending limits unless the candidate has an opponent who: 1) is the nominee of a major political party; and 2) does not agree to be bound by spending limits but is otherwise eligible to receive a public subsidy. Spending limits are not waived for a candidate because an opponent was nominated to the general election ballot as an independent. Minn. Stat. § 10A.25, subd. 10 (1992).

--issued June 3, 1994