

ETHICAL PRACTICES BOARD

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

The following publication does not identify the requester of the advisory opinion, which is nonpublic data under Minn. Stat. § 10A.02, subd. 12(b)

**RE: Application of Minn. Stat. Chapter 10A to activities
of political committees and principal campaign committees**

ADVISORY OPINION # 230

SUMMARY

A political committee created solely to conduct campaign activities and make approved expenditures on behalf of two identified candidates is a committee controlled by the candidates and is prohibited by Minn. Stat. § 10A.19. The individual principal campaign committees of two candidates may have the same officers and committee members and may conduct joint campaign activities if they are conducted in such a way as to avoid violation of applicable provisions of Minnesota Statutes Ch. 10A.

FACTS

As the representative of a group of individuals, you ask the Ethical Practices Board for an Advisory Opinion based on the following facts.

1. The group you represent is interested in supporting two identified candidates who will run for re-election in 1996.
2. Your group wants to form a political committee to support these two candidates by doing everything necessary and proper to ensure their re-election including soliciting votes, raising and spending money, advertising, campaigning and related activities.
3. Your committee would conduct all of the campaign activities and do all of the spending on behalf of the candidates rather than raising money and contributing it to the candidates' individual principal campaign committees.
4. Your committee would not be making independent solicitations or independent expenditures as described in Minn. Stat. § 10A.01, subd. 10b and Minn. Stat. § 10A.17, subd. 4.

5. Your committee intends to terminate after the 1996 election.
6. Presently, neither of the two candidates has a principal campaign committee registered with the Ethical Practices Board. The candidates also want to assure their compliance with the provisions of Minnesota Statutes Ch. 10A.

Your request states a number of individual questions which have been restated for the purposes of this Opinion to identify the key issues the Board believes require consideration.

ISSUE ONE

Are the individual candidates required to form their own principal campaign committees?

OPINION

Yes.

The political committee you describe would conduct activities to further the election of the two candidates by making approved expenditures. Those approved expenditures constitute contributions to the candidate. Minn. Stat. § 10A.01, subd. 10a.

In order to accept contributions which are, in aggregate, more than \$100.00, each candidate must establish a principal campaign committee. Minn. Stat. § 10A.19.

ISSUE TWO

May the proposed political committee be established to conduct all campaign activities and make all expenditures on behalf of the two candidates without violation of Minnesota Statutes Ch. 10A?

OPINION

No. The limited purpose of the specific political committee you describe and the proposed method of operation would result in violation by the two candidates of the prohibition against authorization and control of a political committee other than the candidate's principal campaign committee.

As described, all of your political committee's activities on behalf of each candidate would be donations in kind to that candidate. These donations would have to be made as approved expenditures, each requiring the written approval of the candidate's principal campaign committee with respect to purpose and amount. Minn. Stat. § 10A.17, subd. 2.

Your political committee would be unable to carry out its stated purpose without ongoing consultation with and approval by the candidates, acting through their principal campaign committees.

Minn. Stat. § 10A.19 states that:

“A candidate may not authorize . . . or cause to be formed any other political committee [than the candidate’s principal campaign committee] operating under the direct or indirect control of the candidate.”

It is the Board’s opinion that ongoing approval by the candidates of each of your political committee’s expenditures would result in the candidates exercising direct or indirect control over your political committee. The formation of such a controlled committee is prohibited by Minn. Stat. § 10A.19.

ISSUE THREE

If each of the two candidates establishes a principal campaign committee, may the principal campaign committees have common officers and conduct joint campaign activities?

OPINION

Yes, if the activities are conducted according to the statutes and rules governing such activities.

The same individuals may serve as officers and committee members of each principal campaign committee. Minn. Stat. ch. 10A makes it clear that all accounts and records of the two committees must be kept separately. Each committee is a separate and distinct entity for all purposes.

The committees may participate in joint fundraising, advertising and other joint campaign activities as long as those activities do not result in the violation of the provisions of Minnesota Statutes Ch. 10A. Particular care must be taken to avoid violation of those provisions against earmarking of contributions, contributions between principal campaign committees, and the making of approved expenditures by one principal campaign committee on behalf of another.

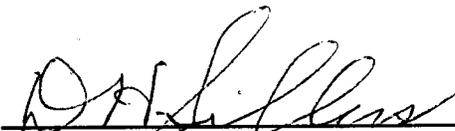
While they have not yet been finally adopted, the Board has promulgated rules relating to campaign finance and, in particular, to certain issues related to joint activities of principal campaign committees. The Board has given its final approval to these rules, which will be adopted after final publication. The rules which are particularly relevant to your request are incorporated into this opinion and reflect the opinion of the Board on the issues covered. The rules are set forth in the statutory citation section at the end of this opinion and are as follows:

Definition of Fundraising event	M.R. 4503.0100, subp. 4
Campaign Materials Including Other Candidates	M.R. 4503.1000, subp. 2
Joint Fundraising Events by Principal Campaign Committees	M.R. 4503.1200

NOTE

Because the Board has concluded that the proposed political committee may not be established consistent with the provisions of Minn. Stat. § 10A.19, it does not make a determination as to whether contributions to the proposed committee would violate the provision against earmarking established in Minn. Stat. § 10A.16.

Issued: 2/23/96



Douglas H. Sillers, Chair
Ethical Practices Board

CITED STATUTES AND PROPOSED RULES

10A.01 DEFINITIONS.

Subdivision 1. For the purposes of sections 10A.01 to 10A.34, the terms defined in this section have the meanings given them unless the context clearly indicates otherwise.

Subd. 10a. "Approved expenditure" means an expenditure made on behalf of a candidate by an entity other than the principal campaign committee of that candidate, which expenditure is made with the authorization or expressed or implied consent of, or in cooperation or in concert with, or at the request or suggestion of that candidate, the candidate's principal campaign committee or the candidate's agent. An approved expenditure is a contribution to that candidate.

Subd. 10b. Independent expenditure. "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. . . .

10A.17 EXPENDITURES.

Subd. 2. No individual or association may make an approved expenditure of more than \$20 without receiving written authorization as to the amount that may be spent and the purpose of

the expenditure from the treasurer of the principal campaign committee of the candidate who approved the expenditure.

Subd. 4. Any individual, political committee, or political fund who independently solicits or accepts contributions or makes independent expenditures on behalf of any candidate shall publicly disclose that the expenditure is an independent expenditure. All written communications with those from whom contributions are independently solicited or accepted or to whom independent expenditures are made on behalf of a candidate, shall contain a statement in conspicuous type that the activity is an independent expenditure and is not approved by the candidate nor is the candidate responsible for it. Similar language shall be included in all oral communications, in conspicuous type on the front page of all literature and advertisements published or posted, and at the end of all broadcast advertisements made by that individual, political committee or political fund on the candidate's behalf.

10A.19 PRINCIPAL CAMPAIGN COMMITTEE.

Subdivision 1. No candidate shall accept contributions from any source, other than self, in aggregate in excess of \$100 or accept a public subsidy unless the candidate designates and causes to be formed a single principal campaign committee for each office sought. A candidate may not authorize, designate, or cause to be formed any other political committee bearing the candidate's name or title or otherwise operating under the direct or indirect control of the candidate. However, a candidate may be involved in the direct or indirect control of a party unit as defined in section 10A.275, subdivision 3. A political committee bearing a candidate's name or title or otherwise operating under the direct or indirect control of the candidate, other than a principal campaign committee of the candidate, may not accept contributions after May 21, 1993, and must be dissolved by December 31, 1993.

Minnesota Rules (proposed)

4503.0101 DEFINITIONS.

Subp. 4. **Fundraising event.** A "fundraising event" is any meal, party, entertainment event, rally or similar gathering of three or more individuals where contributions are solicited or received.

4503.1001 CAMPAIGN MATERIALS INCLUDING OTHER CANDIDATES.

Subp. 2. **Multi-candidate materials prepared by a candidate.** A candidate who produces and distributes campaign materials, including media advertisements, which include images of, appearances by, or references to one or more other candidates, and which mention the candidacy of the other candidates or include a direct or indirect appeal for the support of the other candidates must collect from each of the other candidates a reasonable proportion of the production and distribution costs.

4500.1201 JOINT FUNDRAISING EVENTS BY PRINCIPAL CAMPAIGN COMMITTEES.

Subpart 1. General requirement. Proceeds and costs of joint fundraising events held by two or more principal campaign committees must be allocated in such a way as to avoid earmarking and prohibited transfers or contributions from one principal campaign committee to another.

Subp. 2. Elective procedures to assure compliance. By implementing the following procedures, principal campaign committees may be certain that allocation of proceeds and costs of a joint fundraising event will not result in earmarking or a prohibited transfer or contribution:

- A. contributions are made individually to each committee by check payable to the committee, by cash given in a separate collection for the committee, or by cash with a record kept of each contributor and recipient;
- B. expenses of the event are allocated among the participating committees in direct proportion to the contributions received by each committee;
- C. campaign expenditures and noncampaign disbursements are allocated separately and in the same proportion.

Subp. 3. Record keeping and reconciliation of expenses. The treasurers of principal campaign committees conducting a joint fundraising event must maintain records for the event which include all costs associated with the event. After the conclusion of the event, the treasurers shall complete a reconciliation and allocation of the costs of the event pursuant to Subp. 3 and shall make such transfers of funds between the committees as are necessary to properly allocate the expenses.