

**ETHICAL PRACTICES BOARD**

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

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pursuant to consent for release of information signed by the requester**

**Issued to: Greta Hesse Gauthier  
Director  
Minnesota Environmental Trust Fund Coalition  
P. O. Box 127  
Shafer, MN 55074**

**RE: Contributions from unregistered associations to ballot committee**

**ADVISORY OPINION # 257**

**SUMMARY**

A corporation may make a contribution directly to a ballot question committee; an unregistered association other than a corporation must either register a political fund with the Board or provide a disclosure statement in lieu of registration in order to make the contribution. A lobbyist's activities in promoting the issues of the association the lobbyist is registered for and represents does not constitute a donation in kind to a political committee merely because the committee and the association support the same issues or because the association was involved in establishing the political committee.

**FACTS**

As the representative of a The Minnesota Environmental Trust Fund Coalition, a political committee registered with the Ethical Practices Board, (hereinafter referred to as "the Committee") you request an advisory opinion based on the following facts:

1. The Committee was established by a coalition of individuals and associations for the sole purpose of promoting a ballot question. It will not attempt to influence the nomination or election of any candidate.
2. The Committee wants to solicit and accept contributions from associations, including corporations, not registered with the Board.

3. Some members of the coalition which established the Committee are also lobbyist principals with legislative agendas of their own. In some cases, these individual coalition members may lobby for the ballot question as a part of their own agendas.
4. When coalition members use their own lobbyists to promote the ballot question, they will be doing so on their own behalf; not on behalf of the Committee. In these cases the lobbyists will register and report to the Board based on the coalition member they represent.
5. The Committee wants comply with all of the provisions of Minnesota Statutes, chapter 10A, when it accepts contributions or engages in its other activities.

#### ISSUE ONE

What requirements must be met under Minnesota Statutes, chapter 10A, for a corporation to make, and for the Committee to accept, a contribution of more than \$100?

#### OPINION

Minnesota Statutes, chapter 10A, imposes no requirements on a corporation making a contribution to the Committee. The Committee is required to keep records and report the contribution in the same way it records and reports all other contributions received.

The Committee was established and registered as a "political committee", which is "any association . . . whose major purpose is to influence the nomination or election of a candidate or promote or defeat a ballot question". Minn. Stat. § 10A.01, subd. 15. The Committee, which will not seek to influence the nomination or election of any candidate, is commonly referred to as a "ballot question committee".

Chapter 10A also recognizes "unregistered associations", which are groups or entities which are not political committees or political funds registered with the Board. Corporations are a particular type of unregistered association.

Generally, the treasurer of a political committee may not accept a contribution of more than \$100 from an unregistered association without receiving a prescribed additional disclosure statement at the same time. Minn. Stat. § 10A.22, subd. 7.

Donors are also restricted by a provision that no association other than a political committee may make contributions of more than \$100 in any one year unless the transfer is made from a political fund registered with the Board. Minn. Stat. § 10A.12, subd. 1.

While corporations may not make contributions to influence the nomination or election of candidates, Minn. Stat., Chapter 211B includes specific provisions related to corporate contributions to promote or defeat ballot questions. The Chapter 10A requirements for corporate contributions to ballot question committees must be determined in the context of the relevant Chapter 10A provisions, but also in the context of the statute granting corporations the right to participate in ballot question activities. Minn. Stat. § 211B.15, subd. 4, provides that:

"A corporation may make contributions or expenditures to promote or defeat a ballot question, to qualify a question for placement on the ballot unless otherwise prohibited by law, or to express its views on issues of public concern. A corporation may not make a contribution to a candidate for nomination, election, or appointment to a political office or to a committee organized wholly or partly to promote or defeat a candidate."

While Chapter 211B is not within the jurisdiction of the Board to interpret, we must acknowledge its provisions when they bear on the interpretation of Chapter 10A, for which we are responsible.

We believe that the specific grant of authority to make contributions to promote or defeat ballot questions provided in Chapter 211B is irreconcilable with, and therefore supersedes, the Chapter 10A restrictions otherwise imposed on contributions from unregistered associations. Thus, a corporation may make a contribution directly to a ballot question committee free of any restriction found in Chapter 10A.

The Board first adopted this position in 1980 when it issued advisory opinion #73. In that opinion, the Board said: "A corporation may spend money to promote or defeat ballot questions either by registering its own political fund or by contributing to an already registered political fund".

The Board sees no reason to deviate from its prior opinion. While opinion #73 dealt with contributions from a corporation to a political fund, we see no basis for a different rule relating to contributions to a political committee, as is the case considered in this opinion.

The Board notes, as did the Board in 1980, that the receiving committee will report the contribution and all expenditures resulting from it. We also note that the committee under consideration in this opinion will limit its activities to the ballot question. This restriction eliminates the possibility of a violation of the §211B.15 prohibition on corporate contributions to mixed purpose committees.

## **ISSUE TWO**

What are the Minnesota Statutes, chapter 10A, requirements for an unregistered association other than a corporation to make a contribution of more than \$100 to the Committee?

## **OPINION**

An unregistered association, other than a corporation, which wishes to make a contribution of more than \$100 to a ballot question committee must either (1) register a political fund with the Board and make the contribution through the political fund or (2) provide a disclosure statement with the contribution pursuant to Minn. Stat. § 10A.22, subd. 7, and the requirements set forth under Issue Three of this opinion. Whether both options are available to a particular association depends on the sources of funds from which the association intends to make the contribution.

Only corporations benefit from the specific Chapter 211B authorization of ballot question contributions. Therefore, we must independently examine the requirements of Chapter 10A as they relate to non-corporate unregistered associations.

We first consider the unregistered association which intends to make contributions from membership fees or dues. Such an association may register a political fund of its own, directly transfer membership fees or dues to its fund under Minn. Stat. § 10A.12, subd. 5, and then make contributions from the fund. By registering a political fund, the association removes its political activities from those of an unregistered association and must comply with the requirements imposed on all political funds. This option is only available for the transfer of membership fees and dues, and only for the transfer of those moneys to the association's own political fund.

An unregistered association may also make a contribution to the Committee if it meets the disclosure statement requirements of Minn. Stat. § 10A.22, subd. 7. This is the only option available for an unregistered association which intends to make contributions from association receipts from other than membership fees or dues. This option is also available to associations that wish to make contributions from membership fees or dues without registering a political fund. Minn. Stat. § 10A.22, subd. 7.

To comply with the §10A.22 disclosure statement requirement, a statement meeting the requirements described in Issue Three of this opinion must be provided by the contributing association at the time the contribution is made. The receiving committee is required to file copies of each disclosure statement with its Report of Receipts and Expenditures for the period during which the contribution was received.

We finally note that any association which accepts contributions of more than \$100 to promote or defeat a ballot question must register as a political committee or must register a political fund as a result of accepting the contributions. See Minn. Stat. § 10A.01, subs. 15 and 16, and § 10A.14. For that reason, any contribution of more than \$100 to your committee from an association specifically raising money for the ballot question must come from a registered political committee or political fund.

### ISSUE THREE

What must be disclosed in a statement given with a contribution by an unregistered association under Minn. Stat. § 10A.22, subd. 7, and what time period must the disclosure statement cover?

### OPINION

Minn. Stat. § 10A.22, subd. 7, requires a statement which meets the disclosure and reporting period requirements of Minn. Stat. § 10A.20. The statement must be certified as true and correct by an officer of the contributing association and must cover the period from 30 days preceding the contribution, or from the beginning of the reporting period during which the contribution is made, whichever is longer.

We have previously noted in this opinion that if an association raises more than \$100 to influence the nomination or election of a candidate as defined in Minnesota Statutes, chapter 10A, or to promote or defeat a Minnesota ballot question, it is subject to independent requirements that it register with the Board. Thus the procedure described in Minn. Stat. § 10A.22, subd. 7, and in this opinion, is not available to such an association.

For those associations whose major purpose is to influence nominations or elections at the local level, in other states, or at the federal level, all of the information specified in Minn. Stat. § 10A.20 must be provided on the disclosure statement. Examples of associations included in this group are political action committees or campaign committees involved in local, non-Minnesota, or federal elections. These associations may meet the disclosure requirement by completing the form which the Board provides to its registered political committees.

For unregistered associations for which political activity is not a major purpose, the disclosure requirements of Minn. Stat. § 10A.20 are not as readily applied. These associations consist primarily of unincorporated businesses which want to make limited contributions under Minn. Stat. § 10A.22, subd. 7 from their regular operating income.

The Board does not believe that the disclosure requirements applicable to this limited group of associations should be so burdensome that they become a virtual prohibition on the contributions permitted under Minn. Stat. § 10A.22, subd. 7. The Board will require all disclosure which will help inform the public about the campaign finance aspects of the contribution, but not that which is irrelevant to campaign finance and delves into the private transactions of the association.

Therefore, we set forth below the requirements for a disclosure statement to be provided by an unregistered association which does not have as a major purpose influencing political nominations or elections or promoting or defeating ballot questions and which is making its contribution solely from income derived in the ordinary course of its business. These requirements are not applicable to associations outside of this limited scope.

For such unregistered associations, the Minn. Stat. § 10A.22, subd. 7, statement must include:

1. The complete legal name of the contributing association and its full business address;
2. The name and address of the individual who authorized the contribution;
3. The name and address of each political committee or political fund to which a contribution has been made within the year, together with the amount and date of each transfer;
4. The sum of all such transfers made during the year through the date of the statement;

5. The name and address of the individual who certifies the statement to be true and correct.

#### ISSUE FOUR

Is there any difference in the requirements if the unregistered association makes its contribution by means of a donation in kind?

#### OPINION

No, the requirements stated above apply to all contributions including donations in kind.

#### ISSUE FIVE

Is there a limit to the number of times an unregistered association may make a contribution to a single committee using the Minn. Stat. § 10A.22, subd. 7, disclosure statement procedure?

#### OPINION

No. While the disclosure statement procedure limits contributions to three separate political committees or political funds during a year, it does not limit the number of contributions to each of those three entities. A new disclosure statement must be provided with each separate contribution made.

#### ISSUE SIX

May a political subdivision, including a local unit of government, make a contribution to the Committee, and may the Committee accept that contribution?

#### OPINION

Minnesota Statutes, chapter 10A, does not prohibit contributions by political subdivisions to political committees registered with the Board. However, the Board is not able to advise you or a political subdivision with regard to the many other statutes, charters, or regulations which may limit the political subdivision's activities. A political subdivision intending to make a contribution to the Committee is advised to consult with its own legal advisors.

If a political subdivision determines that it may make a contribution to the Committee, it must provide the same statement with the contribution that an unregistered association would be required to provide.

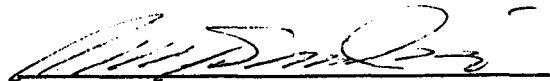
## ISSUE SEVEN

If a member of the coalition which formed the Committee makes the Committee's ballot question one of its own priorities and has its own paid lobbyist undertake lobbying activities in support of the question, would those activities constitute a donation in kind to the Committee.

### OPINION

No. Any entity may make any issue one of its lobbying priorities and lobby on behalf of that issue. As long as the lobbyist is registered on behalf of the entity and represents that entity rather than the Committee, the lobbying efforts do not constitute a donation in kind to the Committee.

Issued: 1-24-97



Carolyn D. Rodriguez, Chair  
Ethical Practices Board

### CITED STATUTES

#### 10A.12 POLITICAL FUNDS.

Subdivision 1. No association other than a political committee shall transfer more than \$100 in aggregate in any one year to candidates or political committees or make any approved or independent expenditure or expenditure to promote or defeat a ballot question unless the transfer or expenditure is made from a political fund.

#### 10A.20 CAMPAIGN REPORTS.

Subd. 2. The reports shall be filed with the board on or before January 31 of each year and additional reports shall be filed as required and in accordance with clauses (a) and (b).

(a) In each year in which the name of the candidate is on the ballot, the report of the principal campaign committee shall be filed ten days before a primary and a general election, seven days before a special primary and a special election, and ten days after a special election cycle. The report due after a special election may be filed on January 31 following the special election if the special election is held not more than 60 days before that date.

(b) In each general election year political committees and political funds other than principal campaign committees shall file reports ten days before a primary and general election.

If a scheduled filing date falls on a Saturday, Sunday or legal holiday, the filing date shall be the next regular business day.

**Subd. 3. Contents of report.** Each report under this section shall disclose:

- (a) The amount of liquid assets on hand at the beginning of the reporting period;
- (b) The name, address and employer, or occupation if self-employed, of each individual, political committee or political fund who within the year has made one or more transfers or donations in kind to the political committee or political fund, including the purchase of tickets for all fund raising efforts, which in aggregate exceed \$100 for legislative or statewide candidates or ballot questions, together with the amount and date of each transfer or donation in kind, and the aggregate amount of transfers and donations in kind within the year from each source so disclosed. A donation in kind shall be disclosed at its fair market value. An approved expenditure is listed as a donation in kind. A donation in kind is considered consumed in the reporting period in which it is received. The names of contributors shall be listed in alphabetical order;
- (c) The sum of contributions to the political committee or political fund during the reporting period;
- (d) Each loan made or received by the political committee or political fund within the year in aggregate in excess of \$100, continuously reported until repaid or forgiven, together with the name, address, occupation and the principal place of business, if any, of the lender and any endorser and the date and amount of the loan. If any loan made to the principal campaign committee of a candidate is forgiven at any time or repaid by any entity other than that principal campaign committee, it shall be reported as a contribution for the year in which the loan was made;
- (e) Each receipt in excess of \$100 not otherwise listed under clauses (b) to (d);
- (f) The sum of all receipts of the political committee or political fund during the reporting period;
- (g) The name and address of each individual or association to whom aggregate expenditures, including approved expenditures, have been made by or on behalf of the political committee or political fund within the year in excess of \$100, together with the amount, date and purpose of each expenditure and the name and address of, and office sought by, each candidate on whose behalf the expenditure was made, identification of the ballot question which the expenditure is intended to promote or defeat, and in the case of independent expenditures made in opposition to a candidate, the name, address and office sought for each such candidate;
- (h) The sum of all expenditures made by or on behalf of the political committee or political fund during the reporting period;
- (i) The amount and nature of any advance of credit incurred by the political committee or political fund, continuously reported until paid or forgiven. If any advance of credit incurred by the principal campaign committee of a candidate is forgiven at any time by the creditor or paid by any entity other than that principal campaign committee, it shall be reported as a donation in kind for the year in which the advance of credit was incurred;
- (j) The name and address of each political committee, political fund, or principal campaign committee to which aggregate transfers in excess of \$100 have been made within the year, together with the amount and date of each transfer;
- (k) The sum of all transfers made by the political committee, political fund, or principal campaign committee during the reporting period;



(l) Except for contributions to a candidate or committee for a candidate for office in a municipality as defined in section 471.345, subdivision 1, the name and address of each individual or association to whom aggregate noncampaign disbursements in excess of \$100 have been made within the year by or on behalf of a principal campaign committee, political committee, or political fund, together with the amount, date, and purpose of each noncampaign disbursement;

(m) The sum of all noncampaign disbursements made within the year by or on behalf of a principal campaign committee, political committee, or political fund; and

(n) A report filed under subdivision 2, clause (b), by a political committee or political fund that is subject to subdivision 14, must contain the information required by subdivision 14, if the political committee or political fund has solicited and caused others to make aggregate contributions greater than \$5,000 between January 1 of the general election year and the end of the reporting period. This disclosure requirement is in addition to the report required by subdivision 14.

Subd. 3a. The reports of a principal campaign committee of a legislative candidate required by this section shall list in a prominent place on the first page of every report each county in which the legislative district lies.

Subd. 4. A report shall cover the period from the last day covered by the previous report to seven days prior to the filing date, except that the report due on January 31 shall cover the period from the last day covered by the previous report to December 31.

#### **10A.22 REPORTS AND STATEMENTS.**

##### **Subd. 7. Statement required; penalty.**

(a) The treasurer of a political committee or political fund shall not accept a contribution of more than \$100 from an association not registered in this state unless the contribution is accompanied by a written statement which meets the disclosure and reporting period requirements imposed by section 10A.20. This statement shall be certified as true and correct by an officer of the contributing association. The political committee or political fund which accepts the contribution shall include a copy of the statement with the report which discloses the contribution to the board. The provisions of this subdivision shall not apply when a national political party transfers money to its affiliate in this state.

(b) An unregistered association may provide the written statement required by this subdivision to no more than three political committees or political funds in any calendar year. Each statement must cover at least the 30 days immediately preceding and including the date on which the contribution was made. An unregistered association or an officer of it is subject to a civil penalty up to \$1,000 if the association or its officer:

(1) fails to provide a written statement as required by this subdivision; or

(2) fails to register after giving the written statement required by this subdivision to more than three political committees or political funds in any calendar year.

An officer of an association who violates this paragraph is guilty of a misdemeanor.