

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) (1994 Minn. Laws, ch. 377, sec. 1)

RE: Use of funds by legislative caucus committee

ADVISORY OPINION # 263

SUMMARY

A caucus committee expenditure for mailings, advertising, or similar costs to promote the party's legislative agenda, if generally permitted by statute, may be an approved expenditure on behalf of a candidate, a general committee disbursement, or an independent expenditure. Classification of the cost depends on the specific content and timing of the promotional piece and on the party's candidates' participation, if any, in approving the expenditure.

FACTS

As the representative of a political party unit, you ask the Ethical Practices Board (Board) for an advisory opinion based on the following facts:

1. The party unit you represent is a party organization in one of the houses of the legislature (a caucus). This party unit has established a political committee (the Caucus Committee) registered with the Board.
2. The Caucus Committee wants to make expenditures for various types of mailings and advertising in some legislative districts of the state to promote the party's legislative agenda.
3. In some of the districts candidates associated with the Caucus Committee's party have principal campaign committees for legislative offices registered with the Board.

4. In some of the districts the incumbent legislator is a member of a party other than the Caucus Committee's party.
5. The next general election in which any legislative offices will be elected will occur in 1998. Candidates will not be able to file for those offices until 1998, so it is not possible to be certain at this time whose names will appear on either the primary or general election ballots.
6. You request the Board's direction with respect to whether the possible expenditures described above are to be allocated to individual candidates.

ISSUE ONE

May contributions received by a Caucus Committee be used to promote the committee's legislative agenda?

OPINION

While you did not specifically ask for the Board's opinion on this preliminary issue, we state it in order to make it clear that in responding to the questions you do specifically ask, we are not determining whether the use of political committee funds for the purposes you contemplate is authorized by statute.

Use of political committee funds is governed primarily by Minnesota Statutes, chapter 211B, the Fair Campaign Practices Act, which is not under the Board's jurisdiction. To determine whether the proposed use is permitted under chapter 211B, you will need to consult your own legal advisors.

For the purposes of discussing the specific issues you raise, we assume that you have independently determined that Caucus Committee funds may be used to promote your party's legislative agenda and that your only request to the Board is for direction on how you should report such an expenditure and whether it would constitute a contribution to any candidate affiliated with your political party.

ISSUE TWO

Assuming that it is generally permitted by statute, is an expenditure by a Caucus Committee promoting the party's legislative agenda generally, without identifying any particular candidate, allocable to any of the party's candidates as a donation in kind?

OPINION

No. An expenditure by a party unit committee which is limited to promoting the party's legislative agenda without identifying or referring to any candidate specifically is an expenditure on behalf of the political party unit itself and is not allocable to any candidate.

Such an expenditure must be reported on the committee's Report of Receipts and Expenditures under the "Other Disbursements" category.

ISSUE THREE

How is the expenditure categorized for reporting and allocation to candidates as a contribution if the name of the current incumbent legislator in the district, who is a member of another party, is specifically mentioned?

OPINION

If the name of an opposing candidate is specifically mentioned, the expenditure may be a committee disbursement not allocable to any candidate; it may be an approved expenditure which is a contribution to the approving candidates; or it may be an independent expenditure.

In general, an expenditure promoting a party's legislative agenda and specifically naming an opposing party's incumbent legislator, is assumed to be made for the purpose of influencing the nomination or election of the party's own candidates in the district for the same office (or future candidates if none are currently registered). Minn. Stat. § 10A.01, subd. 10. Determination of how such an expenditure is classified for reporting and contribution allocation purposes is governed by the criteria discussed below.

Approved expenditure allocable to candidates

If an expenditure as described above is made with the authorization, with the expressed or implied consent, or in cooperation or in concert with, or at the request or suggestion of a candidate of your party in that district, or of the candidate's principal campaign committee, or agent, then the expenditure is generally an approved expenditure which is a contribution to that candidate. Minn. Stat. § 10A.01, subd. 10a.

When a candidate of the party will appear on the primary or general election ballot for the subject office in the district at the time the subject communication takes place, there is a conclusive presumption that the candidate has approved of the expenditure. In such a case, the expenditure is allocated to the candidate without the need for a specific manifestation of the candidate's approval. You should note, however, that making an expenditure on behalf of a candidate without first obtaining written approval is a violation of Minn. Stat. § 10A.17, subd. 2.

If more than one of the party's candidates for the same office and district approve the expenditure, then it is to be allocated between them as a campaign contribution.

Independent Expenditure

An expenditure as described above is an independent expenditure, not allocable to any candidate, if all three of the following criteria are met:

1. the expenditure expressly advocates the election or defeat of a clearly identified candidate in the district;
2. the 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 committee or agent;
3. the political party of the party unit making the expenditure does not have a candidate on the ballot for that office in the district at the time the communication paid for with the independent expenditure takes place;

Minn. Stat. § 10A.01, subd. 10b.


Communications which are the result of independent expenditures must include the disclaimer required by Minn. Stat. § 10A.17, subd. 4.

Independent expenditures are reported in the independent expenditure category on the committee's Report of Receipts and Expenditures. The report must also include the affidavit related to independent expenditures required under Minn. Stat. § 10A.20, subd. 6a.

Committee disbursement

An expenditure as described above which meets the requirements for an independent expenditure, except for the fact that it does not expressly advocate the defeat of the named opposing candidate, is a general disbursement of the committee. Such an expenditure is not allocable to any candidate as a contribution and must be reported under the "other disbursements" category on the committee's Report of Receipts and Expenditures.

Issued: 3-21-97



Carolyn D. Rodriguez, Chair
Ethical Practices Board

CITED STATUTES

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. 10. **Campaign expenditure.** "Campaign expenditure" or "expenditure" means a purchase or payment of money or anything of value, or an advance of credit, made or incurred for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or defeating a ballot question.

. . . .

An expenditure made for the purpose of defeating a candidate is considered made for the purpose of influencing the nomination or election of that candidate or any opponent of that candidate.

. . . .

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. An independent expenditure is not a contribution to that candidate. An expenditure by a political party or political party unit, as defined in section 10A.275, subdivision 3, in a race where the political party has a candidate on the ballot is not an independent expenditure.

. . . .

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.

Subd. 5. Any person who knowingly violates the provisions of subdivision 2 is guilty of a misdemeanor. A person who knowingly violates the provisions of subdivision 4 or falsely claims that an expenditure was an independent expenditure is guilty of a gross misdemeanor.

10A.20 CAMPAIGN REPORTS.

Subd. 6a. Any individual, political committee or political fund filing a report or statement disclosing any independent expenditure pursuant to subdivision 3 or 6 shall file with that report a sworn statement that the expenditures so disclosed were not made with the authorization or expressed or implied consent of, or in cooperation or in concert with, or at the request or suggestion of any candidate, any candidate's principal campaign committee or agent.