

**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: Use of funds by political party unit committee**

**ADVISORY OPINION # 265**

**SUMMARY**

A political party unit expenditure for mailings, advertising, or similar communications, naming a candidate of the opposing party, may be reported as an approved expenditure on behalf of a candidate, a general committee disbursement, or an independent expenditure. Classification of the expenditure depends on the specific content and timing of the communications 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 wants to make expenditures for various types of communications in some legislative districts of the state. In each district, the communications will name the current incumbent legislator, who is a member of an opposing party. The communications may or may not expressly urge the defeat of the incumbent.
2. You request the Board's direction with respect to allocation and reporting of the possible expenditures described in a number of situations.
3. You present seven scenarios which might occur prior to a candidate's filing for office. These scenarios range from a situation where the party has no announced candidate and no candidate registered with the Board for the office to a situation where the party's candidate has announced, has registered with the Board, has party convention endorsement, and has no primary election opponent.
4. The scenarios you present include combinations of the factors of candidacy announcement, registration with the Board, party convention endorsement, and opposition within the party.

5. In each case, it is stipulated that the candidate(s), if any, of the party making the expenditure have not filed for office.

### **ISSUE**

In each of the situations described in the facts, is the expenditure allocated as a contribution to any candidate of the party making the expenditure? How is each expenditure classified by the party unit for reporting purposes?

### **OPINION**

This opinion addresses only the reporting of the described expenditures. We assume that you have independently determined that party unit committee funds may be used in the ways you contemplate. For further discussion relating to general use of political committee funds, you are referred to Issue One of Advisory Opinion #263, which is included in the citations at the end of this opinion.

#### **Allocation and Classification of Expenditure**

Factors such as public or media announcement of a candidate's intention to seek the office, registration of a principal campaign committee with the Board, party endorsement, or the presence of other candidates of the same party, are not relevant to determination of whether an expenditure is a contribution to a candidate of the party.

Allocation of the expenditures you describe, and classification of the expenditures for reporting purposes, are governed by the following principles:

1. If an expenditure 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 an approved expenditure which is a contribution to that candidate. Minn. Stat. § 10A.01, subd. 10a.
2. If the expenditure is not attributable to a candidate under part 1 above, and if the communication does not expressly advocate the defeat of a candidate of an opposing party, it is reported with the other disbursements of the party unit.
3. If the expenditure is not attributable to a candidate under part 1 above, and if the communication expressly advocates the defeat of a candidate of an opposing party, it is reported as an independent expenditure. Minn. Stat. § 10A.01, subd. 10b.

## Reporting requirements

Reports of expenditures made in opposition to a candidate must include certain information regardless of whether the expenditure reported as an independent expenditure or a general disbursement of the committee. Such expenditures which, in aggregate, are more than \$100 in a calendar year to a vendor must include:

1. the name and complete mailing address, including zip code, of the vendor;
2. the dates and amounts of each expenditure;
3. the purpose of the expenditure; that is, what was purchased;
4. the name, address, and office sought, of each candidate opposed by the expenditure;
5. a statement that the expenditure was in opposition to the candidate listed.

An report which discloses independent expenditures must also include the affidavit regarding independent expenditures required by Minn. Stat. § 10A.20, subd. 6a, cited below.

Issued: 4-25-97

  
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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.

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#### **10A.17 EXPENDITURES.**

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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.

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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.**

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

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(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;