

State of Minnesota

Campaign Finance & Public Disclosure 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: Campaign Finance Laws applicable to nonprofit corporation

ADVISORY OPINION 284

SUMMARY

Minn. Stat. § 211B.15 severely restricts the rights of corporations to make political contributions or independent expenditures in Minnesota. This statute may also prohibit the use for these purposes of dues paid by for-profit corporations. Minnesota political committees are not limited in their fundraising solicitations to members of their affiliated associations.

FACTS

As the representative of an association, you ask the Campaign Finance and Public Disclosure Board ("Board") for an advisory opinion based on the following facts set forth in your request letter or conveyed to Board staff in telephone conferences:

1. The association you represent ("The National Association") is organized as a nonprofit corporation. It is a national membership organization which promotes the interests of its members.
2. The National Association's members include individuals, partnerships, sole proprietorships, for profit corporations, and limited liability corporations. The members pay annual membership dues to the National Association. These membership dues constitute the treasury funds of the National Association.
3. The National Association also has a separate pool of money received from corporate donors to be used for political purposes. These corporate funds are not commingled with the treasury funds of the National Association.
3. The National Association states that it has an affiliated political committee in Minnesota ("the Minnesota Committee") which is registered with the Board.

4. The purpose of the Minnesota Committee is to solicit and accept contributions which are used to make contributions to Minnesota legislative and constitutional office candidate

5. The National Association, acting outside of the Minnesota Committee, often sends communications to its members which may include sections urging the election or defeat of candidates in their respective states.

6. These communications regarding Minnesota candidates are not made with the authorization or expressed or implied consent of, or in cooperation or concert with, or at the request or suggestion of, a candidate or committee established to support or oppose a candidate. These communications constitute independent expenditures under Minnesota Statutes, chapter 10A.

Based on the above facts, you ask the Board for opinions on three questions, which are re-stated in the four issues discussed below.

ISSUE ONE

May the National Association, using its treasury funds, mail communications to its Minnesota members which include sections which advocate the election or defeat of a Minnesota candidate for legislative or constitutional office? If so, what is the National Association's liability for reporting costs of such communications?

OPINION

Corporate political activity in Minnesota is generally governed by Minn. Stat. § 211B.15, a statute about which the Board provides factual advice, but does not issue opinions.

Minn. Stat. § 211B.15 provides, in part:

"211B.15 Corporate political contributions.

Subdivision 1. Definitions. For purposes of this section, "corporation" means:

- (1) a corporation organized for profit that does business in this state;
- (2) a nonprofit corporation that carries out activities in this state; or
- (3) a limited liability company formed under chapter 322B, or under similar laws of another state, that does business in this state.

Subd. 2. Prohibited contributions. A corporation may not make a contribution or offer or agree to make a contribution, directly or indirectly, of any money, property, free service of its officers, employees, or members, or thing of monetary value to a major political party, organization, committee, or individual to promote or defeat the candidacy of an individual for nomination, election, or appointment to a political office. For the purpose of this subdivision, "contribution" includes an expenditure to promote or defeat

the election or nomination of a candidate to a political office that 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, a candidate or committee established to support or oppose a candidate.

Subd. 3. Independent expenditures. A corporation may not make an independent expenditure or offer or agree to make an independent expenditure to promote or defeat the candidacy of an individual for nomination, election, or appointment to a political office. For the purpose of this subdivision, "independent expenditure" means an expenditure that is not made with the authorization or expressed or implied consent of, or in cooperation or concert with, or at the request or suggestion of, a candidate or committee established to support or oppose a candidate."

Minn. Stat. § 211B.15 provides penalties for its violation:

"Subd. 6. Penalty for individuals. An officer, manager, stockholder, member, agent, employee, attorney, or other representative of a corporation acting in behalf of the corporation who violates this section may be fined not more than \$20,000 or be imprisoned for not more than five years, or both.

Subd. 7. Penalty for corporations. A corporation convicted of violating this section is subject to a fine not greater than \$40,000. A convicted domestic corporation may be dissolved as well as fined. If a foreign or nonresident corporation is convicted, in addition to being fined, its right to do business in this state may be declared forfeited."

The statute also includes a limited exception for certain types of nonprofit corporations:

"Subd. 15. Nonprofit corporation exemption. The prohibitions in this section do not apply to a nonprofit corporation that:

- (1) is not organized or operating for the principal purpose of conducting a business;
- (2) has no shareholders or other persons affiliated so as to have a claim on its assets or earnings; and
- (3) was not established by a business corporation or a labor union and has a policy not to accept significant contributions from those entities."

The Board does not express an opinion as to whether the National Association falls within the class of nonprofit corporations defined by the exemption.

If you conclude that the National Association falls within the nonprofit corporation exception, you will also need to consider whether it is, nevertheless, prohibited from using membership dues for political purposes because the membership dues include funds from for-profit corporations.

You are advised to seek your own legal counsel in order to make a determination as to whether the National Association may make the independent expenditures described.

The remainder of the discussion of this issue assumes that you have independently concluded that the independent expenditures you contemplate do not create a violation of Minn. Stat. § 211B.15 for either the National Association or its corporate members. The fact that the Board addresses the mechanism for making such expenditures should not be taken as a suggestion that the Board considers them allowable under Minn. Stat. § 211B.15.

If the National Association makes independent expenditures which aggregate more than \$100 in a year, it must make those expenditures through a political fund. Minn. Stat. § 10A.12, subd. 1. The political fund must follow all of the record keeping and reporting requirements for political committees and political funds in Minnesota.

An association may transfer membership dues directly to its associated political fund if not prohibited by other statutes. Minn. Stat. § 10A.12, subd. 5. Thus, (if permitted by Minn. Stat. § 211B.15 or other statutes) the National Association could make its independent expenditures by transferring money from membership dues to a political fund and the fund could reimburse the association for the cost of the expenditures.

Alternatively, the National Association could pay the costs of producing and distributing the mailings, and treat those costs as contributions to an associated political fund. The political fund would show the value of the mailings as an in kind contribution received from the National Association. The political fund would report the use of this in kind contribution as independent expenditures affecting the various principal campaign committees named in the mailings.

The Board notes that the committee which you indicated is registered in Minnesota and affiliated with the National Association is registered as a political committee, not a political fund. In Minnesota, only political funds have affiliated associations. Also, an association may make direct transfers of membership dues only to an affiliated political fund, not to a political committee. You should review with Board staff whether the Minnesota Committee is properly registered.

Issue Two

May the Minnesota Committee solicit contributions from individuals or entities who are not members of the National Association? If so, what contribution limits are applicable?

Opinion

Political committees and funds registered in Minnesota are not limited to any particular group of individuals in solicitation of contributions.

There is no limit on the amount of contributions which may be accepted from an individual or from another political committee or political fund registered with the Board.

The treasurer of a political committee or political fund may not accept more than \$100 from an association not registered with the Board unless at the same time it obtains a disclosure report in accordance with the provisions of Minn. Stat. § 10A.22, subd. 7.

Corporate contributions are restricted by Minn. Stat. § 211B.15, as discussed in Issue One.

Issue Three

May the National Association use its pool of corporate political contributions to reimburse the Minnesota Committee for costs of overhead or fundraising?

Opinion

Minn. Stat. § 211B.15 governs the use of corporate funds for contributions to political committees and political funds in Minnesota as discussed in Issue One.

Issued:

1/23/98

G. Barry Anderson

G. Barry Anderson, Chair
Campaign Finance and Public Disclosure 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.

Subd. 5. Notwithstanding subdivision 1, any association may, if not prohibited by other law, deposit in its political fund money derived from dues or membership fees. Pursuant to section 10A.20, the treasurer of the fund shall disclose the name of any member whose dues, membership fees and contributions deposited in the political fund together exceed \$100 in any one year.

Subd. 6. Any person who knowingly violates the provisions of this section is guilty of a misdemeanor.

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.