

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: Contributions to political committee by Indian tribe**

**ADVISORY OPINION 290**

**SUMMARY**

Providing disclosure as specified in this opinion will fulfill contribution disclosure obligations of an Indian tribe under Minnesota Statutes Chapter 10A, provided that contributions from the Tribe are given to not more than three political committees or political funds in a year.

**FACTS**

As representatives of entities that wish to participate in the Minnesota political process, you ask the Campaign Finance and Public Disclosure Board (the "Board") for an advisory opinion based on the following facts:

1. You represent two entities. One of the entities is a federally recognized Indian tribe (the "Tribe") and the other entity is a political committee formed by the Tribe and registered with the Board (the "Committee").
2. The Tribe operates many businesses and programs for the benefit of its members, each of which may have many receipts and expenses associated with it.
4. The Committee has in the past reported receiving direct contributions of money from the Tribe and has reported making contributions to political committees registered with the Board under Minnesota Statutes, chapter 10A.
5. The Board has now questioned whether the Tribe is permitted, under Chapter 10A, to make direct transfers to the Committee without providing additional statutory disclosure at the time the transfer is made.

You request the Board's interpretation of Minnesota Statutes Chapter 10A with regard to a number of issues related to the Tribe's ability to make political contributions which will not result in Board action against either the Tribe or the recipient. Some of the issues raised in the request for this advisory opinion are outside the interpretation of Minnesota Statutes Chapter 10A, to which the Board is limited. This advisory opinion addresses only those issues seeking an interpretation of Minnesota Statutes Chapter 10A. The Board has attempted to extract the

relevant issues from the request and your additional statements to the Board and to restate them so as to give the Tribe the guidance it requests.

### ISSUE ONE

What disclosure will the Board accept by the Tribe when it makes a contribution to a political committee or political fund

### OPINION

This opinion assumes that the Tribe does not accept political contributions, make approved expenditures, or make independent expenditures (all as defined in Minn. Stat. § 10A.01), any of which would require it to register as a political committee or political fund. (See Issue Two below).

With the above proviso, the Tribe may make contributions to political committees or political funds without triggering a Board inquiry related to improper or missing disclosure as long as:

- (1) contributions are not made to more than three separate political committees or political funds in one year, and
- (2) each contribution is accompanied by disclosure as more fully described in this opinion.

Minn. Stat. § 10A.22, subd. 7, permits contributions from certain associations not registered with the Board as long as financial disclosure is included with each contribution. If the Tribe provides substantially this same information, as further clarified by this opinion, with each of its contributions, no Board action will be undertaken to obtain additional disclosure from the Tribe.

The information to be provided should preserve and promote the valid disclosure purposes of Minnesota Statutes Chapter 10A, while not effectively preventing the Tribe from making contributions. The disclosure which will satisfy these criteria is based on Minnesota Statutes § 10A.20. However, the requirements of Minnesota Statutes § 10A.20 may be somewhat abbreviated for the Tribe, which is an entity not primarily involved in political activity.

The Tribe operates many businesses and programs for the benefit of its members. Requiring disclosure of each receipt and expense in excess of \$100 (as would be required by a literal application of Minnesota Statutes § 10A.20) would require the Tribe to open to the public the detailed financial transactions of each of these businesses and programs. This information, which the Tribe categorizes as "private, confidential and governmental information", would include such details as individual receipts from all operations, with names and addresses of sources, and detailed disbursement records with the names and addresses of persons benefiting from the Tribe's programs.

In determining whether a subset of all financial information about the Tribe will meet the disclosure purposes of Minnesota Statutes Chapter 10A, the Board takes into consideration

the nature of the information which may be disclosed, the likely public benefit of the disclosure, and the likelihood that compelling the disclosure will effectively prevent the Tribe from making contributions.

The Board does not believe that it is the purpose of Minnesota Statutes Chapter 10A to require the Tribe to disclose detailed financial information unrelated to political activity in order to make a political contribution. Disclosure of such information does not assist the public in making decisions regarding the nomination or election of candidates or votes on ballot questions. Because of the possible sensitive and confidential nature of this Tribal financial information, compelling its disclosure would likely have the effect of preventing the Tribe from making contributions.

In defining this limited disclosure statement which will be accepted from the Tribe, the Board notes that the Tribe is more like an unincorporated business than a political organization and that the reasoning of this opinion cannot be extended to an organization which has political activity as one of its major purposes.

The disclosure statement provided by the Tribe to each political committee or political fund receiving a Tribal contribution should include the information outlined below.

- (a) The complete legal name of the Tribe and its full business address.
- (b) The name and address of the individual who authorized the contribution. If the contribution was authorized by more than one individual or by a committee, the names and addresses of each individual involved in the authorization process.
- (c) The amount and date of the contribution which is the subject of the disclosure statement, together with the name, address and Board registration number of the recipient political committee or political fund.
- (d) A description of the source of funds which comprise the contribution, including sufficient detail for the public to understand what the actual source of the funds is. The description of a source of funds must include at least the following:

the name, if any, and general description of each operating entity or unit which is a source of the funds;

the nature of the business or activities carried on by each source entity;

if more than one source is involved, the percentage of the contribution attributable to each source.

(The Board recognizes that this source description requirement is somewhat vague. However, in this abstract discussion it is not possible to speculate on all possible sources which might be disclosed and the level of detail which would be sufficient to describe each. The Board directs the Executive Director to review all disclosure statements submitted under Minn. Stat. § 10A.22 and to request additional information from the donor if it appears appropriate to do so. If a description sufficient to meet the purposes of this provision cannot be obtained through voluntary disclosure by the donor, the Executive Director shall bring the matter to the Board for consideration.)

**(e) The name, address, and employer, or occupation if self-employed, of each individual, political committee, or political fund who within the reporting period has made one or more transfers or donations in kind to the Tribe, 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.**

**This disclosure statement must include disclosure of corporate contributions. However, the Tribe is advised that such corporate contributions may be prohibited by Minn. Stat. § 211B.15.**

**(f) The sum of contributions to the Tribe during the reporting period;**

**If no such contributions have been received, the disclosure statement shall include an affirmative statement to that effect.**

**(Note that if more than \$100 in such contributions have been received by the Tribe in a calendar year, the Tribe is required to register with the Board as a political committee, or to establish and register a political fund which may accept the transfers.)**

**(g) The name, address, and employer, or occupation if self-employed, of each individual or association who within the reporting period has made one or more donations of money, goods, or services, to the Tribe, which money, goods, or services, which are not restricted so as to preclude their use to influence the nomination or election of a candidate or to promote or defeat a ballot question. This disclosure is required regardless of whether such donations were ultimately used to influence the nomination or election of a candidate or to promote or defeat a ballot question. The disclosure shall include the amount and date of each such donation and the aggregate amount of all such donations within the year from each source so disclosed. A donation of goods or services shall be disclosed at its fair market value.**

**If no such donations have been received, the disclosure statement shall include an affirmative statement to that effect.**

**(h) Each loan made or received by the Tribe within the reporting period in aggregate in excess of \$100, which is made or received for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or defeating a ballot question, 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 no such loans have been made or received, the disclosure statement shall include an affirmative statement to that effect.**

**(i) The name and address of each individual or association to whom aggregate independent expenditures or approved expenditures, have been made by or on behalf of the Tribe within the reporting period in excess of \$100, together with the amount, date and purpose of each such 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 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.

(j) The sum of all independent expenditures and approved expenditures made by or on behalf of the Tribe during the reporting period.

If no such expenditures have been made, the disclosure statement shall include an affirmative statement to that effect.

(Note that if more than \$100 in such expenditures have been made by the Tribe in a calendar year, the Tribe is required to register with the Board as a political committee, or to establish and register a political fund which may accept the transfers.)

(k) The amount and nature of any advance of credit incurred by the association for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or defeating a ballot question, continuously reported until paid or forgiven.

If no such advances of credit have been obtained, the disclosure statement shall include an affirmative statement to that effect.

(l) 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 reporting period, together with the amount and date of each transfer. This statement must include the transfer which is the subject of the disclosure statement being provided.

(m) The sum of all transfers (monetary political contributions) made by the Tribe during the reporting period.

(n) 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 disbursements in categories defined in Minn. Stat. § 10A.01, subd. 10c, in excess of \$100 have been made within the reporting period by or on behalf of the Tribe, together with the amount, date, and purpose of each such disbursement.

If no such disbursements been made, the disclosure statement shall include an affirmative statement to that effect.

For the purposes of the disclosure described above, those words or phrases defined in Minn. Stat. § 10A.01 have the meanings given to them in that section.

The statement must include the greater of (a) 30 days prior to the date the contribution was made or (b) the period since the last day included on the previous Reports of Receipts and Expenditures filed by political committees or political funds registered with the Board.

The statement must be signed and certified as true by the treasurer or chief executive officer of the Tribe. If neither position exists, the statement must be signed and certified as true by a person duly authorized by the Tribe to issue the statement. The provisions of Minn. Stat. § 10A.22, subd. 1, relating to the signing of false or incomplete statements apply to a statement filed under Minn. Stat. § 10A.22, subd. 7.

## ISSUE TWO

Under what circumstances must the Tribe register with the Board as a political committee or political fund?

### OPINION

In Issue One, it was assumed that the Tribes limited its financial political activities to making contributions to not more than three political committees or political funds in a year. However, certain conduct of the Tribe could compel it to register as a political committee, in which case, it would be subject to the full reporting requirements applicable to political committees.

The general rule is that an organization that accepts contributions, makes contributions, or makes approved or independent expenditures of more than \$100 to influence the nomination or election of a candidate or to promote or defeat a ballot question must register with the Board. Minn. Stat. § 10A.14, subd. 1. This rule applies to organizations that accept donations for general political purposes if those donations are ultimately used for activities that influence the nomination or election of a candidate or that promote or defeat a ballot question in Minnesota.

The procedure described in this Opinion, wherein the Tribe may make contributions to up to three political committees or political funds in a year with disclosure is based on a statutory exception to the usual requirement that making contributions of more than \$100 triggers the registration requirement.

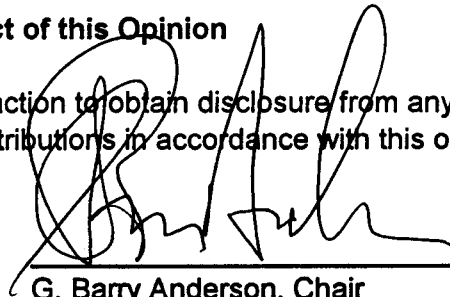
However, if the Tribe, acting outside of its Committee, accepts contributions or makes approved expenditures or independent expenditures, or makes contributions to more than three political committees or political funds in a year, the Tribe, itself, would be subject to the same registration and reporting requirements as any political committee or political fund.

#### Effect of this Opinion

Board staff is directed to take no further action to obtain disclosure from any Indian tribe that provides financial information with its contributions in accordance with this opinion.

Issued: \_\_\_\_\_

7/8/98



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

## CITED STATUTES

### 10A.01 DEFINITIONS.

Subdivision 1. **Scope.** 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. 7. **Contribution.** "Contribution" means a transfer of funds or a donation in kind. Contribution includes any loan or advance of credit to a political committee, political fund, or principal campaign committee, which loan or advance of credit is (a) forgiven, or (b) paid by an individual or an association other than the political committee, political fund, or principal campaign committee to which the loan or advance of credit is made. If an advance of credit or a loan is forgiven or paid as provided in this subdivision, it is a contribution in the year in which the loan or advance of credit is made.

A contribution 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.

Contribution does not include services provided without compensation by an individual volunteering personal time on behalf of a candidate, ballot question, political committee or political fund, or the publishing or broadcasting of news items or editorial comments by the news media.

Subd. 7a. **Transfer of funds.** "Transfer of funds" or "transfer" means money or negotiable instruments given by an individual or association to a political committee, political fund, or principal campaign committee for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or defeating a ballot question.

Subd. 7b. **Donation in kind.** "Donation in kind" means anything of value other than money or negotiable instruments given by an individual or association to a political committee, political fund, or principal campaign committee for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or defeating a ballot question. Donation in kind includes an approved expenditure.

. . .

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 is considered to be made in the year in which the candidate made the purchase of goods or services or incurred an obligation to pay for goods or services.

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.

Except as provided in clause (a), expenditure includes the dollar value of a donation in kind.

Expenditure does not include:

- (a) Noncampaign disbursements as defined in subdivision 10c;
- (b) Transfers as defined in subdivision 7a;

(c) Services provided without compensation by an individual volunteering personal time on behalf of a candidate, ballot question, political committee, or political fund; or

(d) The publishing or broadcasting of news items or editorial comments by the news media.

**Subd. 10a. Approved expenditure.** "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.14 REGISTRATION OF POLITICAL COMMITTEES AND POLITICAL FUNDS.**

**Subdivision 1.** The treasurer of a political committee or political fund shall register with the board by filing a statement of organization no later than 14 days after the date upon which the committee or fund has made a contribution, received contributions or made expenditures in excess of \$100.

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#### **10A.20 CAMPAIGN REPORTS.**

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**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;

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.