

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: Definition of Independent Expenditures

ADVISORY OPINION 296

SUMMARY

Concepts of "agency" and "cooperation" used in the definition of independent expenditures require actual rather than implied agency or cooperation. Vote of candidate's honorary treasurer authorizing an expenditure constitutes express consent by the principal campaign committee to the expenditure.

FACTS

As the representative of a political committee registered with the Campaign Finance and Public Disclosure Board (Board), you ask the Board to respond to a series of hypothetical questions related to the definition of independent expenditures.

The hypothetical facts on which your request is based are stated below, along with the questions you raise.

The opinions expressed below assume that there is no involvement of any kind by the candidate, the candidate's principal campaign committee, or their agent, except as specifically described in the hypothetical situations.

Hypothetical # 1

A registered political committee is approached by an elected official such as a state senator/representative who is a member of her party's caucus. The elected official, although not involved with the campaign of a candidate, asks the political committee to consider an independent expenditure on behalf of the candidate.

Questions

1. Is the elected official an "agent" of the candidate under Minn. Stat. 10A.01 (10b)?

Opinion: The official is an agent of the candidate under Minn. Stat. § 10A.01, subd. 10b, only if the candidate, the candidate's principal campaign committee, or an agent of the candidate has expressly consented to, requested, or suggested that the official undertake the described solicitation.

2. If the elected official is on a party committee established for the purpose of electing more of that party's candidates, is the elected official an agent of the candidate?

Opinion: Although Minn. Stat. § 10A.01, subd. 10b, provides that if the party made the requested expenditure after it had a candidate on the ballot, the expenditure would not be considered independent, mere solicitation of another to make an expenditure which would benefit a candidate does not create a relationship of agency with the candidate's committee.

3. Under the scenario in question #2, is the independent expenditure "indirectly" being influenced by the candidate or the candidate's campaign?

Opinion: The definition of independent expenditure does not rely on indirect influence by a candidate when determining whether an expenditure is independent, so it is not necessary for the Board to address this question.

Hypothetical #2

A political committee is funded and its contributions are determined by a club which has votes on independent expenditures. The entire club membership votes on political committee contributions. One of the members of the club serves as an honorary treasurer of a candidate.

Questions

1. Can the political committee make an independent expenditure on behalf of the candidate that the member of the club serves on that campaign committee?

Opinion: No. The consent of a candidate's principal campaign committee to an expenditure prevents the expenditure from being considered independent. Participation by a member of the candidate's campaign committee in a vote to authorize an expenditure constitutes the express consent of the candidate's principal campaign committee to the expenditure.

2. If there is a board of directors of the club which makes the decision to fund an independent expenditure, is this an independent expenditure under Minn. Stat. 10A.01 (10b)?

Opinion: If the candidate's honorary treasurer has had no involvement in selection of possible candidates for whom independent expenditures may be made and makes no statement or effort on behalf of the candidate's principal campaign committee, the expenditure is an independent expenditure.

3. What if the club member serves on the board of directors?

Opinion: Participation by a member of the candidate's campaign committee in a vote to authorize an expenditure constitutes the express consent of the candidate's principal campaign committee to the expenditure.

4. If the answer to #3 is that this would not be considered an independent expenditure, what steps would need to be taken to sufficiently "wall off" the member so that an independent expenditure could be made?

Opinion: In order to preserve the independence of the expenditure, the member must have no involvement in selection of possible candidates to benefit from independent expenditures and must make no direct or indirect statement or effort to influence any vote on a potential independent expenditure.

Hypothetical #3

A political committee decides to make an independent expenditure. It chooses to use the same advertising agency that the candidate has used to prepare advertising. Due to the agency's familiarity with the campaign, the independent expenditure uses the same colors, same font, and a similar design to the candidates advertising. The political committee pays all agency charges including design time, setup charges, printing costs, etc.

1. Is the advertising agency an "agent" of the campaign under Minn. Stat. 10A.01 (10b)?

Opinion: No. An advertising agency is not the agent of a principal campaign committee unless the principal campaign committee has taken some affirmative action to make the agency its agent.

2. Is the political committee acting in "cooperation", "in concert with" or at the "request or suggestion of" the campaign by using the same advertising agency?

Opinion: No. As long as there is no involvement of any kind by the candidate, the candidate's principal campaign committee, or their agent, the transaction is not in cooperation with, in concert with, or at the request or suggestion of the candidate's principal campaign committee.

3. What if the agency is a billboard company and the political committee uses the same colors?

Opinion: The result is the same as described in the responses to questions 1 and 2.

4. What happens if the political committee uses advertising provided by a political party and not from the candidate's campaign?

Opinion: The result is the same as described in the responses to questions 1 and 2. This opinion does not address the question of how the political party should treat the purchase or transfer of the advertising materials to the political committee.

Issued: July 24, 1998


Carolyn D. Rodriguez, 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. 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.

. . . .