

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 expenditure definition; reporting contributions

ADVISORY OPINION 298

SUMMARY

A principal campaign committee's costs of producing a book about its candidate and the candidate's public policy positions are campaign expenditures. Donation of goods or services used in production of the book are contributions to the principal campaign committee.

FACTS

As the representative of a candidate (the Candidate), you ask the Campaign Finance and Public Disclosure Board (the "Board") for an advisory opinion based on the following facts:

1. The Candidate you represent is running for office in the current election cycle. The general election will be conducted in November, 1998.
2. Between March, 1998, and May, 1998, the Candidate's principal campaign committee (the Committee) prepared and produced a book, which was published on June 2, 1998. Distribution of the book began on that date.
3. The book includes the Candidate's public policy positions. It also includes biographical information, information about the Candidate's accomplishments in state office, and a flattering foreword.
4. 1000 copies of the book were produced initially. The Committee intends to produce at least 2000 more copies of the book in August.
5. The book has been provided by the Committee free to anyone who requests it. Sale of copies of the book is also under consideration.
6. The Committee has an offer from a supporter to pay the costs of the book. You have a number of questions concerning the book and its financing. You also indicate that, if possible, the Committee would like to treat the costs of producing the book as noncampaign disbursements.

ISSUE ONE

Must the costs of production, publication, and distribution of the book be reported as campaign expenditures?

OPINION

Yes. Costs of producing, publishing, and distributing the book are campaign expenditures because the costs are incurred for the purpose of influencing the nomination or election of the candidate. Minnesota Statutes § 10A.01, subd. 10.

Use of principal campaign committee funds in general is controlled by Minnesota Statutes Chapter 211B, which is not under the jurisdiction of the Board. However, once spending has been determined to be appropriate, it must be reported as prescribed in Minnesota Statutes Chapter 10A. Chapter 10A recognizes two main categories of campaign spending, campaign expenditures and noncampaign disbursements.

Principal campaign committee spending is generally for the purpose of influencing the nomination or election of the candidate, since that is the main purpose for which the principal campaign committee exists. Only if spending falls within one of the specifically defined noncampaign disbursement categories may those categories be used.

In the case of the book the Committee has produced, there is nothing to suggest that it was for any purpose other than to influence the nomination or election of the Candidate. It is no different than any other piece of campaign literature in which candidates present their positions, outline their experience and qualifications, and generally portray themselves as the best person for the office. Such publications are, in fact, a cornerstone of most committees' efforts to influencing the nomination or election of their candidates.

The Board sees nothing about the subject book that suggests it should be treated differently than any other piece of campaign literature produced by a principal campaign committee.

ISSUE TWO

If goods or services were provided to the committee for production of the book, are those items contributions to the Committee. If so, how should they be valued?

OPINION

Goods and services provided by businesses are in kind contributions to the Committee unless the fair market value is paid for the goods or services. Minnesota Statutes § 10A.01, subd. 7b; Minnesota Statutes § 10A.20, subd. 3(b). Fair market value means the value you would have to pay to obtain equivalent goods or services in the marketplace.

Corporate contributions to principal campaign committees are prohibited under Minnesota Statute Chapter 211B. Therefore, the Committee must pay for any goods or services provided by a corporation.

A contribution of more than \$100 from an association not registered with the Board is prohibited. If unregistered, non-corporate, businesses have contributed goods or services in excess of \$100,

those contributions are prohibited unless the required disclosure was provided. Minn. Stat. § 10A.22, subd. 7.

Goods provided by individuals are in kind contributions to the committee and are valued at fair market value. Services provided by individuals who are volunteering their own personal time to the Committee do not constitute a contribution to the Committee. Minnesota Statutes § 10A.01, subd. 7. If the individual is paid by another person or entity while providing services to the Committee, the value of the services is a contribution from the entity paying for the services. Minn. Rules 4503.0500, subp. 4.

As noted above, if a provider of goods or services is paid fair market value for the goods or services, the transaction does not result in a contribution from the provider.

ISSUE THREE

How should the transaction be reported if a contributor of goods or services is subsequently paid for the goods or services?

OPINION

An in kind contribution occurs when the goods or services are provided to, and accepted by, the Committee. Such contributions must be reported on the Committee's next Report of Receipts and Expenditures.

Contributions may be returned to the contributor at any time. Payment for an in kind contribution is the same as returning the contribution.

The Committee should note, however, that if a contribution which is in excess of the donor's contribution limit is accepted, the facially excessive contribution violation is not cured by the subsequent return of the contribution.

Minnesota Statutes § 10A.15, subd. 3, provides that cash contributions may be returned within 60 days of the date of deposit or they are deemed accepted. A cash contribution which gave rise to a violation may be returned within 60 days to remedy the violation. It is appropriate to apply the substance of this remedy to in kind contributions as well.

An in kind contribution that resulted in a violation of Minnesota Statutes Chapter 10A, may be returned (or paid for) within 60 days of its acceptance to remedy the violation. This remedy relates only to Minnesota Statutes Chapter 10A violations and not to violations of the corporate contribution prohibitions of Minnesota Statutes Chapter 211B.

An in kind contribution which is later paid for should be reported on the contributions schedule of the Report of Receipts and Expenditures as of the date it was accepted. When it is paid for, a negative entry on the same schedule should be made below the initial entry, with an explanation that the negative entry results from payment for the in kind contribution. This transaction results in a decrease in the in kind contribution and the associated in kind expenditure.

At the same time, a campaign expenditure should be recorded for payment of the goods or services.

ISSUE FOUR

If a third party reimburses providers of goods or services or reimburses whoever originally paid for the goods and services, will that reimbursement be a contribution to the Committee from the third party?

OPINION

Yes. Whatever individual or entity ultimately pays the costs associated with an activity which is for the purpose of influencing the nomination or election of the candidate is the contributor.

ISSUE FIVE

Can the book, or its distribution, be restructured in some way so that its costs will not be campaign expenditures?

OPINION

The Board cannot conceive of any means by which the Committee could report the costs of the book as noncampaign disbursements.

The Board also notes that if the purpose of the book was not to influencing the nomination or election of the candidate, there may be some question under Minnesota Statutes Chapter 211B as to whether its production is a valid use of principal campaign committee funds.

You suggest that the Committee might sell the book if that would provide a means for avoiding treatment of its costs as campaign expenditures. However, whether the book is sold or not has no bearing on how its costs are reported. Costs of producing material which will influencing the nomination or election of the candidate are campaign expenditures regardless of whether those materials are eventually sold or given away.

If the Committee does sell the book, it should remember that sales of campaign materials such as buttons, T-shirts, bumper stickers, books, and the like are treated as fundraising proceeds. The full amount of each sale is a contribution from the purchaser.

Issued: 8-5-98



Carolyn 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. 7. **Contribution.** "Contribution" means a transfer of funds or a donation in kind.

Contribution does not include services provided without compensation by an individual volunteering personal time on behalf of a candidate . . .

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 . . .

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

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.