

State of Minnesota
Campaign Finance & Public Disclosure Board
First Floor South, Centennial Building . 658 Cedar Street . St. Paul, MN 55155-1603

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Issued to: Ventura For Minnesota, Inc.
 David Bradley Olsen, Counsel
 Henson & Efron Professional Association
 1200 Title Insurance Building
 400 Second Avenue South
 Minneapolis, MN 55401

RE: Status of a nonprofit corporation as political committee; application of Minnesota Statutes Chapter 10A to nonprofit corporation's activities

ADVISORY OPINION 306

SUMMARY

Ventura For Minnesota, Inc. is not a political committee and is not required to establish a political fund based on its activities as presently described. Funding the educational or constituent services activities of the governor and lieutenant governor or paying for certain expenses of the governor and lieutenant governor, however, could require VMI to register a political fund with the Board. The Board is not authorized to issue an opinion whether VMI is permitted to make political contributions under an exception to the corporate contribution prohibition of Minn. Stat. § 211B.15.

FACTS

As the attorney for an association, you ask the Campaign Finance and Public Disclosure Board (Board) for an advisory opinion based on the following facts:

1. Ventura For Minnesota, Inc. (VMI) is a Minnesota nonprofit corporation. It is governed by its board of directors and its activities are carried out by its appointed corporate officers.
2. The Jesse Ventura For Governor Volunteer Committee (the Campaign Committee) is the principal campaign committee of Governor Jesse Ventura and Lieutenant Governor Mae Schunk. The Committee is registered with the Board and is subject to the provisions of Minnesota Statutes Chapter 10A.

3. During the course of the last election, the Campaign Committee paid to have certain concepts developed for its use in advertising and campaign materials. These concepts are intellectual properties that the Campaign Committee now owns, including the concept of the Jesse Ventura action figure, the "Thinker" parody, various slogans, and props, such as "Special Interest Man".
4. The ability to use the intellectual property rights owned by the committee is dependent on having both the right to the concepts themselves and the separate right to use the name and likeness of Jesse Ventura. The Campaign Committee owns the right to the concepts and was granted the right to use Jesse Ventura's name and likeness for campaign purposes only. Thus, the Campaign Committee does not have the authority to assign to others the right to use the name and likeness of Jesse Ventura for commercial purposes.
5. VMI has obtained the intellectual property rights to the concepts (not including the right to use the name and likeness of Jesse Ventura) from the Campaign Committee. VMI believes that it is not required to pay the Campaign Committee any consideration for these rights. However, VMI will abide by the Board's decision in this regard.
6. VMI independently obtained a non-exclusive license from Jesse Ventura to use his name and likeness in connection with the concepts and any derivative products developed by VMI.
7. One of VMI's purposes is to protect and manage the use of the name and likeness of Jesse Ventura while he is governor. It will do this in part by making efforts to stop the production and distribution of unauthorized Jesse Ventura merchandise. It will also accomplish this purpose by making licensed merchandise available at a reasonable cost to meet the public demand that exists. VMI believes that making licensed merchandise readily available is one of the best ways to eliminate the market for unlicensed products.
8. VMI will not engage in the manufacture or sale of any products. Rather, VMI will license the concepts and right to the Ventura name and likeness to manufacturer/distributors who will be responsible for manufacture and distribution of the products under license. The manufacturer/distributors will make the wholesale products available for retail sale.
9. VMI has entered into license agreements for the manufacture and sale of sweatshirts, caps, a Jesse Ventura action figure, and other items. Under its license agreements, VMI retains the right to approve product and packaging design. With respect to the action figure, VMI approved a package design that included a replica of a Ventura campaign button containing the text "Jesse Ventura For Governor".
10. A representative of VMI brought samples of the action figure and its packaging to the Board's April 9, 1999, meeting. The Board had not previously been informed about the inclusion of the words "Jesse Ventura For Governor" on the packaging and

expressed concern that the packaging might constitute campaign material. Later that day, VMI's board of directors met to discuss the possible packaging issue.

11. VMI's licensee informed VMI that the first shipment of the product was already en route to the purchasers and was legally the property of these purchasers. VMI's licensee later researched the possibility of placing stickers over the button image, but found that retailers would not permit it to do so. Without the retailers' consent, the licensee had no legal right to enter stores or warehouses to change the text on the packaging.
12. VMI's licensee changed the packaging text from "Jesse Ventura For Governor" to "Jesse Ventura The Governor", effective for all new orders. All of the packaging with the original text had been used prior to the Board's April 9, 1999, meeting.
13. VMI states that it's board approved the packaging with the understanding that the button replica was nothing more than a historical reference, not unlike the references to Jesse having been a Navy Seal or a coach. VMI further states that it did not occur to its board that the sale of the action figure by independent retail outlets might be considered to be for the purpose of influencing a nomination or election as the result of the inclusion of a campaign button replica on the packaging. VMI states that its purpose in approving the packaging was not to influence the future nomination or election of Jesse Ventura as governor.
14. VMI's income will result solely from licensing and royalty fees paid by its licensees. All transactions between VMI and its licensees will be based on fair market value.
15. VMI will not accept contributions or donations from any individual or association.
16. VMI will not make any contribution to any principal campaign committee, political committee or political fund, or party unit, all as defined in Minnesota Statutes Chapter 10A, nor will VMI make any independent expenditure as defined in Minn. Stat. § 10A.01, subd. 10b.
17. It is VMI's stated intention, and a term of its articles of incorporation, that it will not engage in political activity. VMI does not intend to do any act for the purpose of influencing the nomination or election of a candidate or promoting or defeating a ballot question.
18. VMI will use its income for operating expenses and to engage in charitable activities, including the making of charitable contributions, and to engage in education, civic betterment, and social improvement activities.
19. VMI would also like to fund the education and constituent service activities of the governor and lieutenant governor and to pay "the non-personal expenses incurred by the governor and lieutenant governor incidental to and required by their serving in public office". At this time, VMI has not established procedures for making specific decisions regarding the funding of educational or constituent service activities of the

governor and lieutenant governor or regarding payment for costs of serving in office, nor has it clearly defined the types of activities or costs that might be funded in these categories.

VMI asks the Board for an opinion regarding the transfer of intellectual property rights from the Campaign Committee to VMI and regarding VMI's activities. The Board has determined that prior to answering those requests, it must consider whether the activities of VMI make it a political committee which would be required to register under and comply with the provisions of Minnesota Statutes Chapter 10A.

ISSUE ONE

Do the activities of Ventura For Minnesota, Inc. make it a political committee as defined in Minn. Stat. § 10A.01, subd. 15, or require it to register a political fund as defined in Minn. Stat. § 10A.01, subd. 16?

OPINION

The activities of Ventura for Minnesota, Inc., as described in the facts, do not make it a political committee under Minn. Stat. § 10A.01, subd 15. However, its future activities may require it to establish and register a political fund under Minn. Stat. § 10A.01, subd. 16, and Minn. Stat. §§ 10A.12 and 10A.14.

Minn. Stat. § 10A.01, subd. 15, defines a political committee as "any association . . . whose major purpose is to influence the nomination or election of a candidate or to promote or defeat a ballot question." The definition depends on whether the major purpose of VMI is to influence the nomination or election of a candidate. In making that determination, the Board has considered the written materials submitted by VMI, as well as the testimony of VMI representatives at the Board's meetings of February 26, 1999, and June 14, 1999.

While VMI has multiple purposes, the Board concludes that its major purposes are those asserted by VMI. Those major purposes are to protect and manage the use of the name and likeness of Jesse Ventura while he is in office and to use its income for charitable, educational, civic, and social projects.

Because the Board concludes that VMI is not a political committee, VMI is not required to register with the Board or report any of its financial activities to the Board. However, even though its "major" purpose is not to influence the nomination or election of a candidate, it is possible that VMI will engage in certain more limited activities that are, in fact, to influence the nomination or election of the governor. In such a case, VMI will be required to establish a political fund and make its political expenditures through that fund.

VMI suggests that since the next gubernatorial election will not occur until the year 2002, its expenditures prior to that year can never be considered to be for the purpose of influencing the nomination or election of the governor. However, Governor Ventura is a "candidate" under Minn. Stat. § 10A.01, subd. 5, until he terminates his principal campaign committee. Expenditures to

influence the nomination or election of a candidate may be made throughout an election cycle. Therefore, it is possible that certain of VMI's expenditures could be considered to be for the purpose of influencing the governor's nomination or election even if those expenditures occur prior to the actual election year.

At this time, VMI has not established procedures for making specific decisions regarding the provision of funding for education or constituent services activities of the governor and lieutenant governor or payment for certain expenses of the governor and lieutenant governor, nor has it clearly defined the types of activities or costs that might be funded in these categories.

Without specific facts, the Board is unable to advise VMI whether any funding of education or constituent services activity or payment of expenses of the governor and lieutenant governor would be considered to be for the purpose of influencing the nomination or election of the governor. If such funding or payments are considered to be for the purpose of influencing the nomination or election of the governor, VMI would be required to establish and register a political fund, which would report to the Board, and to make the payments from that fund.

VMI expects to request a further advisory opinion when it has developed its procedures and plans regarding these matters.

ISSUE TWO

Does the inclusion of the text "Jesse Ventura For Governor" on some of the action figure packages result in a requirement that VMI register a political fund with the Board?

OPINION

The approval of inclusion of the text "Jesse Ventura For Governor" on the first run of packaging for the action figures was not "for the purpose of influencing the nomination or election" of Jesse Ventura. Therefore, VMI is not required to register a political fund with the Board as a result of that approval.

In the "Issue One" section of this opinion, the Board concluded that the major overall purpose of VMI was not to influence the nomination or election of a candidate. That meant that VMI as a whole was not a political committee. However, the Board noted that even an association that is not a political committee might engage in limited activities to influence the nomination or election of a candidate. If it does so, the association must form a political fund through which it conducts those political activities.

An entity is brought under the regulation of Minnesota Statutes Chapter 10A when it engages in activities that are "for the purpose of influencing the nomination or election of a candidate". The definitions of "political committee", "political fund", "contribution", and "expenditure" all depend on the "purpose" of the action undertaken. The Board presumes that any action that may have as its logical result the influencing of the nomination or election of a candidate is done for that purpose. In most cases, this presumption results in an accurate conclusion. However, this presumption

may be contradicted by facts shown by the association, in which case, the Board will determine the association's "purpose" based on all of the evidence.

In concluding that VMI's packaging decision was not for the purpose of influencing the nomination or election of Jesse Ventura the Board considered the written statements and testimony of VMI representatives concerning VMI's motive and understanding in approving the packaging. The Board also considered VMI's reaction when the issue was raised. The initial reaction, at the April 9, 1999, Board meeting was one of surprise at the possibility that the packaging might be considered campaign material. VMI's subsequent reaction was to have the text changed on future packaging and to explore ways to change existing packaging that was already en route to stores.

The Board believes that inclusion of the button replica on the packaging is not likely to influence the 2002 gubernatorial election. This lack of influence is consistent with the VMI's assertion that the packaging design was not for the purpose of influencing the nomination or election of a candidate. These facts, along with VMI's prompt action to change the packaging after the question was raised do provide support for the conclusion that approval of the text was not for the purpose of influencing the nomination or election of Jesse Ventura.

This opinion is limited to the present facts before the Board. It does not address any theoretical or real fact situation that may exist in the future as the 2002 elections draw closer.

ISSUE THREE

May the Campaign Committee convey the intellectual property rights to VMI without consideration?

OPINION

Minnesota Statutes Chapter 10A does not include any provision that would permit a principal campaign committee to give away its assets without consideration. The Board is unaware of any other applicable statute, with the exception of the provision for charitable contributions of up to \$50 per year permitted in Minnesota Statutes Chapter 211B.

Minn. Stat. § 10A.24 requires that a terminating committee dispose of its physical assets at fair market value. The Board recognizes that this provision is not directly applicable to a non-terminating committee or to an intellectual property asset. However, the Board concludes that the principle of receiving fair market value should be applied to the transfer of any asset by any committee, unless the some other statute specifically governs the transaction.

Unless VMI and the Campaign Committee determine that some statute outside the Board's jurisdiction governs the transaction, VMI must pay the Campaign Committee the fair market value of the assets transferred. The parties must determine fair market value based on all of the factors that would be used in a similar transaction between unrelated parties. The Board assumes that this determination will include consideration of the cost to the Campaign Committee of having the concepts created, the Committee's retained rights, if any, to use the concepts in the future, and

the fact that the Committee's transfer to VMI does not include the right to use the name and likeness of Jesse Ventura; a right that VMI has independently obtained from Jesse Ventura himself.

VMI must pay the Campaign Committee the determined value and the Campaign Committee must report the payment as miscellaneous income from the sale of an asset.

ISSUE FOUR

Do licensing and royalty fees paid to VMI constitute contributions under Minnesota Statutes Chapter 10A?

OPINION

Licensing and royalty fees paid to VMI are not contributions under Minnesota Statutes Chapter 10A. Under the stated facts, VMI itself is not a political committee or political fund. It does not intend to accept money within the definition of a contribution under Minn. Stat. § 10A.01, subds. 7 and 7a.

ISSUE FIVE

Does money spent by VMI for its stated purposes constitute corporate political contributions? If so, do the contributions fall within the nonprofit corporation exception to the general prohibition of Minn. Stat. § 211B.15 on corporate contributions?

OPINION

VMI's expenditures for charitable purposes do not constitute political contributions. On the limited facts available, it also does not appear that its expenditures for educational, civic, or social projects would constitute political contributions. Without additional facts, the Board is unable to issue an opinion whether payment for education or constituent service activities of the governor and lieutenant governor or certain expenses of the governor and lieutenant governor will constitute political contributions.

It is VMI's position that even if certain of its expenditures constitute political contributions, they are not prohibited by Minn. Stat. § 211B.15, which generally prohibits corporate contributions.

The Board's jurisdiction does not include interpretation of Minn. Stat. § 211B.15. The Board is charged only with informing its clients of the existence of the statute and its regulation of corporate contributions. Therefore, the Board cannot advise whether any political contribution made by VMI falls within an exception to the general prohibition applicable to corporate contributions.

ADDENDUM

VMI also asks the Board for an opinion that licensing and royalty fees paid to VMI do not constitute prohibited corporate contributions under Minn. Stat. § 211B.15. Minnesota Statutes Chapter 211B is not within the Board's jurisdiction and the Board cannot issue an opinion on its application.

Issued: 6/14/99

Sidney Pauly

Sidney Pauly, Chair

Campaign Finance and Public Disclosure Board

CITED STATUTES

Minnesota Statutes §10A.01 Definitions

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. 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.

Subd. 15. Political committee. "Political committee" means any association as defined in subdivision 3 whose major purpose is to influence the nomination or election of a candidate or to promote or defeat a ballot question.

"Political committee" includes a major political party as defined in subdivision 12, a minor political party as defined in subdivision 13, and any principal campaign committee formed pursuant to section 10A.19.

Subd. 16. Political fund. "Political fund" means any accumulation of dues or voluntary contributions by an association other than a political committee, which accumulation is collected or expended for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or defeating a ballot question.

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.

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.