State of Minnesota
Campaign Finance and Public Disclosure Board
190 Centennial Building . 658 Cedar Street . St. Paul, MN 55155-1603

THE FOLLOWING PUBLICATION DOES NOT IDENTITY
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NON PUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)

RE: Reporting of political expenditures

ADVISORY OPINION 320

SUMMARY

A corporation may bundle services provided to entities registered with the Campaign Finance and Public Disclosure Board, however for reporting purposes, the recipients must allocate the costs among the actual types of underlying services provided. When engaging in joint development projects, or the reselling of data developed for other clients, a corporation and its clients must ensure that each client pays the reasonable value for the goods or services provided so that neither the corporation nor any client subsidizes the benefit received by another client.

FACTS

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

1. The corporation you represent (hereinafter referred to as "the Corporation") is a for-profit Minnesota corporation that is not organized, operated, or directed by any political party, political committee or political fund, or any group of these entities.

2. The Corporation expects to sell political campaign goods and services to its clients at package prices. That is, the Corporation may combine graphic design, printing, telemarketing and other services into a package and charge a flat fee for the comprehensive services.

3. The Corporation believes that most of its clients will be political committees or political funds registered with the Board, including party units and candidates' principal campaign committees.

4. Because of prior party affiliations of certain officers or directors of the Corporation, it is anticipated that most or all of the Corporation's business will come from affiliates of the

same party or from political committees and political funds that share the views and objectives of that party.

5. The Corporation may provide services to groups of clients who participate in a project and wish to share the costs of that project.

6. The Corporation may develop themes or messages, including graphics and text, that may be incorporated into the campaigns of the clients who contracted for the development as well as others who were not a part of the development effort.

7. The Corporation may also develop data or intellectual property for one client, but retain the contractual right to re-sell the data or property to other clients on such terms and conditions as it may negotiate.

8. The Corporation wishes to be able to assist its clients in complying with the Ethics in Government Act, Minnesota Statutes Chapter 10A, by understanding how it should conduct its activities and how to charge its clients so that no inadvertent contributions from one client to another or from the Corporation to a client result.

ISSUE ONE

May the Corporation bundle various services into packages and charge a flat fee for the comprehensive services? If so, may the recipient clients report the cost as a lump sum for the bundled services?

OPINION

Minnesota Statutes Chapter 10A does not give the Board any jurisdiction over how a corporation conducts its business. Thus the Corporation may package its services as it sees fit. However, the Board is charged with providing factual information regarding Minn. Stat. § 211B.15, which may have application in this situation. Minn. Stat. § 211B.15 prohibits corporate contributions to political committees and political funds registered with the Board.

In order to avoid a contribution of in-kind services to a registered entity, the Corporation must ensure that it charges fair market value for its services.

While Chapter 10A cannot dictate how the Corporation sells its services, it does control how the registered entities purchasing those services must report their costs. Minn. Stat. § 10A.20, subd. 3(g) states that a report must disclose "the amount, date, and purpose of each expenditure". Examination of the reporting provisions of Minnesota Statutes Chapter 10A makes it clear that a primary purpose of those provisions is to provide the public with meaningful information about how registered entities are using money raised for political purposes. The Board believes that allowing potentially large packages of services to be bundled under a heading such as "campaign management services", "development services", or the like, would not provide meaningful disclosure.

The entities incurring expenses for these bundled services must allocate the costs on a reasonable basis between the various components of the packaged services. The Corporation could facilitate this allocation by providing the purchasers with appropriate dollar breakdowns of service.

Without a specific fact situation to address, the Board is not able to make a statement as to what level of detail would meet the disclosure requirements of Chapter 10A.

ISSUE TWO

What must the Corporation and its clients do to ensure that the contemplated methods of doing business and charging for services do not result in transactions that the Board would consider to be in-kind contributions between the Corporation's clients or contributions from the Corporation itself?

OPINION

When bundling goods and services for a group of clients, the only obligation of the Corporation is to charge the group as a whole the fair market value of the goods and services. The Corporation has no obligation to ensure that the purchasers themselves properly allocate the cost to ensure that no in-kind contribution results between purchasers.

An in-kind contribution between two purchasers will result if one entity pays for a higher percentage of the services than the percentage of benefit or use that entity gets from the purchase. In other words, a party unit, for example, would not ordinarily be entitled to pay for an entire package of services that would be used to benefit certain party candidates. The candidates' principal campaign committees would be required to pay in proportion to the benefit they expect to receive.

Without a specific fact situation on which to base its opinion, the Board can only state that allocation of packaged services between multiple purchasers must be on a reasonable basis. A "reasonable basis" is a one based on facts and reasonable assumptions. It is a basis that can be explained and that would be accepted by ordinary people as being reasonable.

The Board notes, on the other hand, that there may be times when a party unit would be permitted to develop certain types of intellectual property that it could allow affiliated registered entities to use without charge. For example, it is the opinion of the Board that the party could have such concepts as an election year logo or a campaign slogan developed and make the rights to use those concepts available to its affiliates without charge. The Board specifically limits this opinion to the right to use the logo concept or the slogan. Any physical goods, such as artwork, buttons or the like could not be provided without charge.

This opinion should not be interpreted as approving or disapproving the development of intellectual property concepts or products beyond logos or slogans. The Board does not consider here whether broad political campaign concepts or programs may be developed by

parties for use by their affiliates without charge. Without a detailed fact situation to consider, the Board is unable to issue an opinion on specific possible scenarios.

The Corporation may create data, concepts, or other intellectual property for one entity and retain the right to resell those items to other entities. In order to avoid a corporate contribution to the original client in the form of a reduced price, the Corporation must have a commercially reasonable basis for any reduction in the fee from that which the Corporation would charge for the work if it did not retain the right to resell the items. The Board would expect the reduction to be based on an analysis of the potential number of times the asset may be re-sold and the likely resale price. Other factors are also likely to be relevant. The underlying test will be whether the cost reduction was commercially reasonable based on all relevant information.

When reselling intellectual property to second and subsequent entities, the Corporation must ensure that it receives fair market value for the assets. Fair market value is the reasonable value of the assets sold. Factors that may be relevant would include the cost to develop the asset for a single purchaser, the number of re-sales expected, and any dilution in the value of the assets that may result from multiple sales. Ultimately, fair market value is the value at which a commercial sale would be consummated between a reasonable buyer and a reasonable seller without other influences such as the mutual desire to support specific political objectives.

The lack of specific facts prevents the Board from providing clear direction in this matter. The Board advises you or your clients to seek additional advice from the Board if you or they encounter actual situations in which the general guidance provided in this opinion is insufficient.

If a question of costs, allocations, or contributions arises concerning a transaction between the Corporation and its clients or between clients, the ultimate determination made by the Board will be whether there was, intentionally or unintentionally, a subsidy which resulted in a contribution from the Corporation to a client or from one client to another. It would then be up to the participants to be able to explain how costs and allocations were determined and why those costs and allocations did not result in one entity subsidizing another by paying for goods or services that benefited another in greater measure than the financial participation of the other entity.

Issued: 4/11/2000

Sidney Pauly, Chair
Campaign Finance and Public Disclosure Board

CITED STATUTES

211B.15 Corporate political contributions.

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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.

. . .

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.