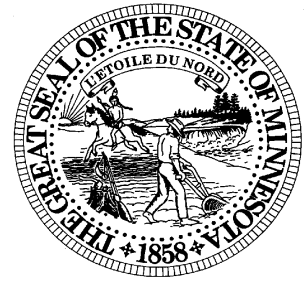


Minnesota

*Campaign Finance and
Public Disclosure Board*



Date: August 17, 2010

To: Advisory Opinion Files
Opinions 336

From: Gary Goldsmith, Executive Director

Telephone: 651-296-1721

The analysis and opinions set forth in Issue One and Issue Two of Advisory Opinion No. 336, regarding the interpretation of “express advocacy” and “independent expenditure”, were superseded by the Board’s subsequent decision in *Matter of the Complaint of Novack regarding Minnesota Majority*, which is available at:

http://www.cfboard.state.mn.us/bdinfo/investigation/120208MN_Majority.pdf

Accordingly, the analysis and opinion set forth in Issue One and Issue Two of Advisory Opinion No. 336, regarding the interpretation of “express advocacy” and “independent expenditure”, are no longer effective.

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 NON-PUBLIC DATA**
under Minn. Stat. § 10A.02, subd. 12(b)

RE: Use of specific words or phrases in campaign expenditures, independent expenditures, or lobbying communications and disclosure of funds used for lobbying purposes.

ADVISORY OPINION 336

SUMMARY

Campaign expenditures, independent expenditures, and lobbying communications are defined by their purpose, and do not require the presence of specific words or phrases in order to come under the provisions of Minnesota Statutes Chapter 10A. A lobbyist principal must disclose to the Board the name of an individual or entity who provides, either directly or as a percentage of their total dues or contributions, over \$500 for lobbying efforts.

FACTS

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

1. The association you represent is a nonprofit corporation registered in Minnesota.
2. The association proposes to create voter guides and scorecards to inform the public of “candidates’ qualifications for office, records and positions. The association also proposes to produce “communications to the public urging the general public to contact legislators to influence legislation”.
3. For the purposes of this advisory opinion the association defines words of “express advocacy” as: “vote for”, “elect”, “support”, “cast your ballot for”, “Smith for Congress”, “defeat”, and “reject”.

4. The association may spend more than \$500 to compensate a lobbyist, and may spend more than \$50,000 in a calendar year on communications that influence legislative or administrative action, or the official action of a metropolitan governmental unit.

ISSUE 1

Are organizations whose major purpose is to engage in communications to “influence the nomination or election of a candidate or to promote or defeat a ballot question”, but whose communications do not include express words of advocacy (as provided in fact #3 of this opinion) subject to regulation as a political committee?

OPINION

Yes. If an organization’s major purpose is to produce communications to influence the nomination or election of a candidate for judicial office, the state legislature, a constitutional office, or to promote or defeat a statewide ballot question, the organization is a political committee as provided in Minn. Stat. §10A.01, subd. 27. Depending on the presence of coordination with a candidate or the candidate’s committee the communication as described would be either an approved campaign expenditure or an independent expenditure as defined in Minn. Stat. §10A.01, subd. 9 and 18. Neither definition requires the presence of specific words or any other condition beyond the “purpose” of the expenditure.

ISSUE 2

Would communications by the association which do not contain express words of advocacy but which are designed to “influence the nomination or election of a candidate or to promote or defeat a ballot question” be subject to regulation under the political fund requirements?

OPINION

Yes. A “political fund” is defined and regulated in Minn. Stat. §10A.01, subd. 28, and Minn. Stat §10A.12. Political funds have different priorities and are organizationally different than political committees, however, the test to determine if a communication is a reportable campaign expenditure or independent expenditure is the same. If the communications are designed to influence the nomination or election of a candidate for judicial office, the state legislature, a constitutional office, or to promote or defeat a statewide ballot question, the provisions of Chapter 10A apply to the communication and the political fund that produces the communication.

ISSUE 3

Is an individual a lobbyist under Minnesota Statutes if the individual is paid and spends more than \$250 or more than five hours in a month “for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials” if the communications lacked express words of advocacy?

OPINION

Yes. The activities that define a lobbyist are those provided in Minn. Stat. §10A.01, subd. 21. This statute does not require or prevent a lobbyist from including specific words or phrases in communications that have the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit.

ISSUE 4

Will the association be a lobbyist principal if it either spends more than \$500 in a calendar year to engage a lobbyist, compensate a lobbyist, or authorize the expenditure of money by a lobbyist, or if it spends more than \$50,000 to influence legislative or administrative action, or the official action of a metropolitan governmental unit, even though such communications would lack express words of advocacy?

OPINION

Yes. Any communication made by an association for the purpose of influencing legislation or administrative action, or the official action of a metropolitan governmental unit, or which urges others to communicate with public and local officials, must be reported to the Board as a lobbying disbursement. If the cost of lobbying expenditures is greater than \$50,000 in any calendar year, the association responsible for the communications must report to the Board as a lobbyist principal. An association is also classified as a lobbyist principal if it spends more than \$500 in aggregate in a calendar year to compensate a lobbyist. As stated in the response to issue 3, lobbying communications are defined by their purpose, not by the presence or lack of any specific word or phrase.

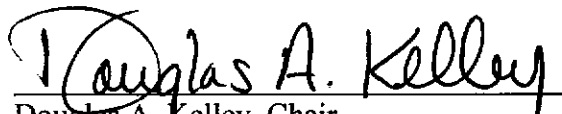
ISSUE 5

A lobbyist is required by Minn. Stat. 10A.04, subd. 4(d), to report “each original source of money in excess of \$500 in any year used for the purpose of lobbying to influence legislative action, administrative action, or the official action of a metropolitan unit”. Does this provision require a lobbyist principal to supply the lobbyist with a list of those individuals and associations who contributed more than \$500 specifically for lobbying? Or should the lobbyist principal provide a list of all contributors over \$500?

OPINION

The lobbyist principal must provide the lobbyist with a list of all individuals and associations who earmark their aggregate contribution of over \$500 for lobbying purposes, and those individuals whose aggregate contributions multiplied by the percentage of the budget of the lobbyist principal used for lobbying is greater than \$500. For example, a lobbyist principal uses 50% of its total budget for lobbying in Minnesota. If an individual or association contributed over \$1,000 to the lobbyist principal, the individual's name, address, employer, or if self-employed, the occupation and place of business, must be disclosed to the Board.

Issued 1/25/02


Douglas A. Kelley, Chair
Campaign Finance and Public Disclosure Board

Cited Statutes and Rules

10A.01 DEFINITIONS.

Subd. 9. 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 (1), "expenditure" includes the dollar value of a donation in kind.

"Expenditure" does not include:

(1) noncampaign disbursements as defined in subdivision 26;

(2) services provided without compensation by an individual volunteering personal time on behalf of a candidate, ballot question, political committee, political fund, principal campaign committee, or party unit; or

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

Subd. 21. Lobbyist.

(a) "Lobbyist" means an individual:

(1) engaged for pay or other consideration, or authorized to spend money by another individual, association, political subdivision, or public higher education system, who spends more than five hours in any month or more than \$250, not including the individual's own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials; or

(2) who spends more than \$250, not including the individual's own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials.

(b) "Lobbyist" does not include:

(1) a public official;

(2) an employee of the state, including an employee of any of the public higher education systems;

(3) an elected local official;

(4) a nonelected local official or an employee of a political subdivision acting in an official capacity, unless the nonelected official or employee of a political subdivision spends more than 50 hours in any month attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit other than the political subdivision employing the official or employee, by communicating or urging others to communicate with public or local officials, including time spent monitoring legislative or administrative action, or the official action of a metropolitan governmental unit, and related research, analysis, and compilation and dissemination of information relating to legislative or administrative policy in this state, or to the policies of metropolitan governmental units;

(5) a party or the party's representative appearing in a proceeding before a state board, commission, or agency of the executive branch unless the board, commission, or agency is taking administrative action;

(6) an individual while engaged in selling goods or services to be paid for by public funds;

(7) news medium or its employees or agents while engaged in the publishing or broadcasting of news items, editorial comments, or paid advertisements which directly or indirectly urge official action;

(8) a paid expert witness whose testimony is requested by the body before which the witness is appearing, but only to the extent of preparing or delivering testimony; or

(9) a party or the party's representative appearing to present a claim to the legislature and communicating to legislators only by the filing of a claim form and supporting documents and by appearing at public hearings on the claim.

Subd. 27. Political committee. "Political committee" means an association whose major purpose is to influence the nomination or election of a candidate or to promote or defeat a ballot question, other than a principal campaign committee or a political party unit.

Subd. 28. Political fund. "Political fund" means an accumulation of dues or voluntary contributions by an association other than a political committee, principal campaign committee, or party unit, if the accumulation is collected or expended to influence the nomination or election of a candidate or to promote or defeat a ballot question.

Subd. 33. Principal. "Principal" means an individual or association that:

(1) spends more than \$500 in the aggregate in any calendar year to engage a lobbyist, compensate a lobbyist, or authorize the expenditure of money by a lobbyist; or

(2) is not included in clause (1) and spends a total of at least \$50,000 in any calendar year on efforts to influence legislative action, administrative action, or the official action of metropolitan governmental units, as described in section 10A.04, subdivision 6.

10A.12 POLITICAL FUNDS.

Subdivision 1. **When required.** An association other than a political committee or party unit may not contribute more than \$100 in aggregate in any one year to candidates, political committees, or party units or make any approved or independent expenditure or expenditure to promote or defeat a ballot question unless the contribution or expenditure is made from a political fund.

Subd. 2. **Commingling prohibited.** The contents of a political fund may not be commingled with other funds or with the personal funds of an officer or member of the fund.

Subd. 3. **Treasurer.** An association that has a political fund must elect or appoint a treasurer of the political fund.

Subd. 4. **Treasurer vacancy.** A political fund may not accept a contribution or make an expenditure or contribution from the political fund while the office of treasurer of the political fund is vacant.

Subd. 5. **Dues or membership fees.** An association may, if not prohibited by other law, deposit in its political fund money derived from dues or membership fees. Under section 10A.20, the treasurer of the fund must disclose the name of any member whose dues, membership fees, and contributions deposited in the political fund together exceed \$100 in a year.

Subd. 6. **Penalty.** A person who knowingly violates this section is guilty of a misdemeanor.