

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

**THIS ADVISORY OPINION IS PUBLIC DATA PURSUANT TO A
CONSENT FOR RELEASE OF INFORMATION SIGNED BY THE REQUESTOR**

Issued to: Alan W. Weinblatt
Weinblatt & Gaylord, PLC
1616 Pioneer Building
336 N. Robert Street
St. Paul, MN 55101

RE: Definition of the term agent in relation to independent expenditures.

ADVISORY OPINION 338

SUMMARY

A consultant who provides services to a principal campaign committee is an agent of that committee. An expenditure is not independent if an agent of a principal campaign committee directly or indirectly influences the political party unit, political committee, or political fund to make the expenditure.

FACTS

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

1. The campaign consultants provide their services to political committees and funds (political committees), principal campaign committees, and party units as defined in Minnesota Statutes Chapter 10A. At any given time a consultant may be simultaneously employed by multiple political committees, principal campaign committees, and party units.
2. The political committees and party units employ the services of the consultants that may want to make independent expenditures, as defined in Minn. Stat §10A.01, subd. 18, on behalf of candidates.

3. For the purpose of this advisory opinion the term “candidate” means a candidate covered by the provisions of Chapter 10A.

ISSUE ONE

May a political committee make an independent expenditure in support of a candidate for an office covered by Chapter 10A even though one of its consultants is also a fee for service paid consultant to the candidate who benefits from the independent expenditure?

OPINION

Minnesota Statutes §10A.01, subdivision 18, provides in part: “ ‘Independent expenditure’ means an expenditure expressly advocating the election or defeat of a clearly identified candidate, if the 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.” In the Board’s view the statute requires a high wall of separation between the entity making an independent expenditure, and the candidate who benefits from that expenditure. A breach of that wall would occur if an “agent” of the principal campaign committee initiates, requests, suggests or influences an expenditure by a political committee or party unit that benefits the agent’s candidate.

A consultant to a principal campaign committee is an agent of that committee because the consultant is engaged to perform duties that benefit the principal campaign committee. The consultant’s status as an agent of the principal campaign committee provides an avenue for coordination, cooperation, and at least implied consent between the principal campaign committee and any entity making a political expenditure that benefits the principal campaign committee. If a consultant is simultaneously providing services to a principal campaign committee and a political committee or political party unit, the wall of separation needed to make a campaign expenditure independent may be compromised.

Under certain circumstances, a consultant simultaneously employed by a principal campaign committee and an entity making independent expenditures may provide their services in an environment totally isolated from the independent expenditures. Such an environment would require strict adherence to internal procedures and controls establishing and maintaining separation between the consultant and the individuals and procedures used to make the independent expenditure, and prohibiting any contact or communications between them regarding such expenditures.

ISSUE TWO

Using the scenario provided in Issue One, is the expenditure independent if the political committee does not compensate the consultant for their services?

OPINION

The consultant's relationship to the principal campaign committee makes them an agent of the principal campaign committee regardless of any compensation they may receive for services provided to the political committee or party unit. An expenditure is not independent if an agent of the principal campaign committee that benefits from the expenditure directly or indirectly influences the political committee or party unit making the expenditure.

ISSUE THREE

Using the scenario provided in Issue One, is the expenditure independent if the candidate or the candidates principal campaign committee does not compensate the consultant for their services?

OPINION

The consultant provides services that have the goal of assisting the candidate and the principal campaign committee. This makes the consultant an agent of the committee regardless of any compensation received. As stated above, an agent of a principal campaign committee must be isolated from the processes and individuals used to make independent expenditures.

ISSUE FOUR

Using the scenario provided in Issue One, is the expenditure independent if the consultant does or does not receive a fee from both the political fund and one or more candidates or principal campaign committees, which may be the beneficiaries of a political committees independent expenditures?

OPINION

As with Issues One, Two, and, Three it is the purpose and nature of the relationship between the consultant and the principal campaign committee that makes the consultant an agent of the principal campaign committee. The presence or lack of compensation does not change the Board's view that a consultant is an "agent" for the purposes of Min. Stat. §10A.01, subd. 18. As with the previous issues in this opinion, the Board's position is that an agent of a principal campaign committee cannot simultaneously provide services to a political committee or party unit that wishes to make an independent expenditure for the benefit of the agent's candidate unless the agent is thoroughly isolated from the procedures and individuals making the independent expenditure.

ISSUE FIVE

Can a political party unit make independent expenditures that benefit one or more candidates if the party unit receives services from a consultant that also provides services to at least one of the candidates that would benefit from the independent expenditure?

OPINION

A political party unit is treated in the same manner as a political committee under the provisions of Minn. Stat. §10A.01, subd. 18. Therefore the opinion expressed in Issue Four applies here as well.

However, Minn. Stat. §10A.275 provides for specific types of multicandidate political party expenditures that are not subject to the same standards of separation required of independent expenditures. A multicandidate expenditure as defined in this statute may occur even if the party unit and one or more candidates who benefit from the expenditure are employing the same consultant. A multicandidate expenditure does not count against any candidates spending limit, and does not need prior approval from the principal campaign committees that benefit from the expenditure.

ISSUE SIX

If a consultant or a member of the principal campaign committee does not have actual oral or written authority to make or authorize the making of expenditures on behalf of the candidate or the candidate's principal campaign committee, may they participate with a political committee or party unit in making an independent expenditure that benefits the principal campaign committee?

OPINION

No. As provided by Minn. Stat. §10A.17, subd. 1, only the treasurer or deputy treasurer of a principal campaign committee may authorize expenditures for the committee. The separation required for an independent expenditure by Minn. Stat. §10A.01, subd. 18, extends beyond the treasurer and deputy treasurer to the candidate, all members of the principal campaign committee, and agents of that committee.

ISSUE SEVEN

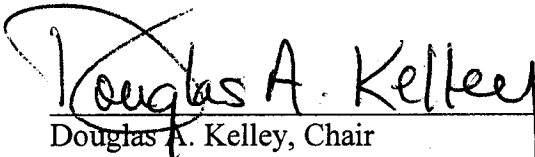
If a consultant or a member of the principal campaign committee is not placed in a position in which they may authorize expenditures on behalf of the candidate or the principal campaign committee, may they participate with a political committee or party unit in making an independent expenditure that benefits the principal campaign committee?

OPINION

No. The authority to make or authorize expenditures is not the only way a person may be an agent of a candidate or committee, and is not needed to conduct the types of communication prohibited between principal campaign committees or their agents and an entity making an independent expenditure.

Issued

4/23/02



Douglas A. Kelley, Chair

Campaign Finance and Public Disclosure Board

Cited Statutes

10A.01 DEFINITIONS.

Subd. 18. Independent expenditure. "Independent expenditure" means an expenditure expressly advocating the election or defeat of a clearly identified candidate, if the 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 in a race where the political party has a candidate on the ballot is not an independent expenditure.

10A.17 EXPENDITURES.

Subdivision 1. Authorization. A political committee, political fund, principal campaign committee, or party unit may not expend money unless the expenditure is authorized by the treasurer or deputy treasurer of that committee, fund, or party unit.

10A.275 MULTICANDIDATE POLITICAL PARTY EXPENDITURES.

Subdivision 1. Exceptions. Notwithstanding other provisions of this chapter, the following expenditures by a party unit, or two or more party units acting together, with at least one party unit being either: the state committee or the party organization within a congressional district, county, or legislative district, are not considered contributions to or expenditures on behalf of a candidate for the purposes of section 10A.25 or 10A.27 and must not be allocated to candidates under section 10A.20, subdivision 3, paragraph (g):

(1) expenditures on behalf of candidates of that party generally without referring to any of them specifically in a published, posted, or broadcast advertisement;

(2) expenditures for the preparation, display, mailing, or other distribution of an official party sample ballot listing the names of three or more individuals whose names are to appear on the ballot;

(3) expenditures for a telephone conversation including the names of three or more individuals whose names are to appear on the ballot;

(4) expenditures for a political party fundraising effort on behalf of three or more candidates; or

(5) expenditures for party committee staff services that benefit three or more candidates.