

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: Phil Madsen
Treasurer
Jesse Ventura Volunteer Committee
PO Box 397
Circle Pines, MN 55014

RE: Use of E-Mail and Websites in Political Campaigns.

ADVISORY OPINION 339

SUMMARY

Internet based campaign materials are subject to the contribution limits and reporting requirements of Minnesota Statutes Chapter 10A .

FACTS

As the treasurer of the Jesse Ventura Volunteer Committee, you ask the Campaign Finance and Public Disclosure Board (the Board) for an advisory opinion based on the following facts:

1. The Jesse Ventura Volunteer Committee (JVVC) a principal campaign committee registered with the Board and therefore is covered by the provisions of Minnesota Statutes Chapter 10A.
2. The JVVC maintains a website, and an extensive list of e-mail addresses of supporters of the JVVC.
3. The cost to the JVVC for the website and use of e-mail communications includes the cost of an Internet service provider (ISP), computer software, and occasional use of technical consultants.

4. Much of the JVVC Webs site and e-mail list is developed and maintained by volunteers of the JVVC, using their own computers, ISP connection, software, and technical knowledge.
5. The cost of sending e-mail is static after the monthly ISP charge is paid. Therefore, sending an e-mail to 10,000 individuals is no more or less expensive than sending an e-mail to one individual. If the work is done by volunteers the cost of adding a page or a hyperlink to the JVVC website is zero.
6. In the future, the JVVC may wish to post web pages or add hyperlinks that promote other candidates or organizations, and/or advocate candidates or issues in e-mails sent to individuals on the JVVC e-mail list.
7. For the purposes of this advisory opinion the word "entity" is defined as a principal campaign committee other than the JVVC, a political party unit, or political committees and funds (political committees), all of which are under the provisions of Minnesota Statutes Chapter 10A.
8. For the purposes of this advisory opinion, the requestor asks that "entity" also include non-profit charitable corporations that are prohibited from political activity of any kind by tax law and or charter. The Board is limited to providing opinions to individuals or organizations that are defined and regulated by Minnesota Statutes Chapter 10A. As non-profit charitable corporations are outside of that scope, the opinions contained in this document do not apply to such organizations.

FOREWORD

Before addressing the specific questions of this advisory opinion request it is appropriate to note the growing use of the Internet for campaign related purposes. As a relatively new factor in the political arena, the Internet is sometimes viewed as a "place" outside of laws used to regulate more traditional campaign activities. In the Board's view the Internet, despite all of the attention and comment it receives, is in the end nothing more than a medium for communication. If the Board were to exclude websites, hyperlinks, and e-mails from the requirements of Chapter 10A it would in effect be deciding that the medium, not the message, determines whether a given communication is campaign material. There is nothing in Chapter 10A to suggest that the legislature views the Internet as a forum for campaigning without regulation or reporting requirements. Indeed, as the number of candidates who establish campaign websites and who use e-mail to distribute campaign related messages grows with each election, the interest from the public for disclosure on Internet based campaign expenditures will similarly grow.

ISSUE ONE

If the JVVC is requested to use its e-mail list to send a message encouraging recipients to contribute funds, join, or in some other manner support an entity, and the JVVC sends the requested message, is the message reported to the Board as an in kind donation? If so how is the value of the donation determined?

OPINION

Contributions of anything of value other than money are considered a "donation in-kind", as provided in Minnesota Statutes §10A.01, subd. 13. The use of an e-mail list to gather donations or other support for an entity clearly has value to the entity that requested the e-mail.

The value of the donation in-kind is determined by the fair market value that would be paid by the recipient to purchase the same item or service on the open market. The Board recognizes that determining fair market value for Internet based items may be more difficult than determining the fair market value of a more traditional donation in-kind. The nature of the Internet is that its most important component is intellectual, not material, in nature. Intellectual capital is often more difficult to assign value to than tangible items such as used office furniture. Nonetheless, the content and services of the Internet have value. The value of an item does not necessarily equate to the cost of providing the item or service. In many cases the cost to the contributor of providing an in-kind donation is zero. The contributor has already paid for the item being donated; the contributor does not need to pay for the item again in order to provide it as an in-kind donation. The fact that sending an e-mail is a donation without cost to the contributor does not differentiate it from most other in-kind donations. Providing a comprehensive list of factors to consider in determining fair market value is beyond the scope of this opinion. Some factors that appear reasonable to consider when calculating the fair market value of sending the e-mail include the cost of acquiring ISP service, and the cost of either buying a single use of the JVVC's mailing list, or another comparable commercial e-mail list. If the fair market value of sending the e-mail is greater than \$20 the JVVC must record the donation, and report it to the Board, (Minn. Stat. §10A.13, subd. 1). Additionally, if the e-mail is valued at over \$20 and is donated to a principal campaign committee, the JVVC must obtain written permission from the treasurer of the principal campaign committee authorizing the purpose and the amount that may be spent on the expenditure (Minn. Stat. §10A.17, subd. 2). Written authorization is not required before making an approved expenditure for a political committee or party unit.

If the fair market value of the e-mail is over \$100 the contribution is itemized and reported to the Board. Itemization of an in-kind donation includes the date on which the donation was made, a description of the item donated, and its fair market value. If the value of the e-mail is over \$20 but no more than \$100, the expenditure is reported to the Board as a non-itemized expenditure. Non-itemized expenditures are reported in aggregate total. If the value of the in-kind donation is \$20 or less the JVVC is not required to record or report the donation to the Board.

Because the JVVC is a registered principal campaign committee it is important to note that the JVVC may make a donation to another state level candidate only if the JVVC terminates during the reporting period in which the donation is made (Minn. Rules 4503.0300, Subp. 2). Additionally the JVVC is prohibited, even if it intends to terminate, from making donations to local or federal level candidates (Minn. Stat. §10A.27, subd. 9). There is no restriction on the JVVC making a donation to a political party unit or a political committee.

ISSUE TWO

Using the scenario provided in Issue One, what reporting requirements occur if the entity did not request or authorize the e-mail?

OPINION

If the e-mail is sent to benefit another candidate, without any request, cooperation, coordination, or consent of the candidate, the candidate's committee, or an agent of the candidate, it would be an "independent expenditure", as defined in Minn. Stat. §10A.01, subd. 18. Beginning August 1, 2002 principal campaign committees are prohibited from making independent expenditures (Laws of 2002, Chapter 363, section 23, subd. 3a). Independent expenditures made by the JVVC prior to August 1, 2002, regardless of value, must be reported to the Board. The JVVC would need to file an Affidavit of Independent Expenditures when reporting the cost of the independent expenditure to the Board (Minn. Stat. 10A.20, subd. 6a). In addition, an e-mail sent as a independent expenditure would need to contain a statement in conspicuous type that the message is an independent expenditure, and is not approved by the candidate who benefits from it, nor is that candidate responsible for the content of the e-mail (Minn. Stat. §10A.17, subd. 4).

Independent expenditures are by definition disbursements to promote or defeat a specific candidate. A donation in-kind to a political party unit or political committee must be accepted by the entity receiving the item in order for the donation to occur. E-mail sent without the prior knowledge or cooperation of a party unit or political committee does not fall under either category, and does not need to be reported to the Board.

ISSUE THREE

If the JVVC is requested by an entity to publish a page on its website that encourages support of the entity, and the JVVC publishes the requested page, is the page an in-kind contribution to the entity that is reported to the Board? If so how is the value of the contribution determined?

OPINION

Providing one or more pages on a website at the request of an entity for use in creating support for that entity meets the definition of a donation in-kind, as discussed in Issue One. The donation must be reported to the Board if the fair market value of the item, in this case a web page, is over \$20. The same concerns outlined in Issue One relating to donations to state, federal, and local candidates apply to this issue as well.

In determining the fair market value of donating space on the JVVC website, the nature of the donation and the costs saved by the entity when the JVVC distributes their material on the Internet must be considered. If the JVVC is developing and or hosting website pages for an entity then the other entity has saved the cost of contracting with a vendor to receive comparable services. A fair market valuation of the web pages developed and hosted by the JVVC should reflect the value that a private sector vendor would put on similar services.

ISSUE FOUR

Using the scenario provided in Issue Three, what reporting requirements occur if the entity did not request or authorize the Web page?

OPINION

Issue Four varies from Issue Two only in the specific of the item being provided by the JVVC. Therefore, the opinion provided for Issue Two applies to Issue Four.

ISSUE FIVE

If the JVVC is requested by an entity to create a hyperlink from the JVVC website to the entity's website, and the JVVC creates the requested hyperlink, is the hyperlink an in-kind contribution to the entity that is reported to the Board? If so how is the value of the contribution determined?

OPINION

As with the e-mail and web pages the hyperlink provides an item of value to the entity it benefits. That the hyperlink has value is confirmed by the fact that an entity is requesting its creation. The hyperlink raises the same issues of fair market value, twenty dollar reporting threshold, and donations to state, federal, and local candidates discussed in the opinion for Issue One.

ISSUE SIX

Using the scenario provided in Issue Five, what reporting requirements occur if the entity did not request or authorize the hyperlink?

OPINION

Issue Six varies from Issue Two only in the specific of the item being provided by the JVVC. Therefore the opinion provided for Issue Two applies to Issue Six.

ISSUE SEVEN

If an entity cooperates with the JVVC to use e-mails, web pages, or hyperlinks, to promote the candidates of the JVVC, is this a contribution to the JVVC? If so, how should the value of the contribution be determined?

OPINION

By cooperating with an entity to use the resources of the Internet to campaign for its candidates, the JVVC is authorizing an "approved expenditure" as defined in Min. Stat. §10A.01, subd. 4. The JVVC must provide written authorization to the entity stating the amount that may be spent and the purpose of the expenditure (Minn. Stat. §10A.17, subd. 2). The written authorization provides a safeguard so that the JVVC maintains control over the approved expenditure being made on behalf of the committee.

An approved expenditure is always a donation in-kind (Min. Stat. §10A.01, subd. 13). As with all donations in-kind the item is reported to the Board if the value exceeds \$20. A donation in-kind is both a donation to the JVVC, and a campaign expenditure by the JVVC. Therefore the donation counts against the aggregate contribution limit of the entity that provided the donation, and to the campaign spending limit of the JVVC. A donation in-kind, if over \$20 in value, is reported as a contribution and as an expenditure in the reporting period in which it is received (Minn. Stat. §10A.20, subd. 3). A principal campaign committee should not provide written authorization for any approved expenditure without calculating the value of the donation and the effect it will have on the contribution, expenditure, and special source limits of the committee.

ISSUE EIGHT

If an entity uses e-mail, web pages, or hyperlinks to promote the candidates of the JVVC without the knowledge or authorization of the JVVC, what obligation does the JVVC have in discovering the Internet activity and how is the value determined and reported to the Board?

OPINION

An entity making a campaign expenditure that benefits the candidates of the JVVC without the knowledge or authorization of the JVVC is making an independent expenditure. The nature of independent expenditures is that the JVVC will either find out about the expenditure after it occurs, or will perhaps never learn of the expenditure. In

either case the JVVC is not required to search the Internet for independent expenditures or make any reference to them when reporting to the Board.

ISSUE NINE

If the JVVC makes available on its website a multi-page campaign brochure that can be downloaded and printed by anyone who accesses the website, and if one or more individuals download, print, and distribute multiple copies of the brochure, is this a contribution to the JVVC, and if so how is it reported to the Board?

OPINION

As long as the decision to distribute multiple copies of the brochure is made by the individual, and not at the request or suggestion of the JVVC, the distributed brochures become an independent expenditure made on behalf of JVVC candidates. The JVVC is not required to report independent expenditures made on its behalf.

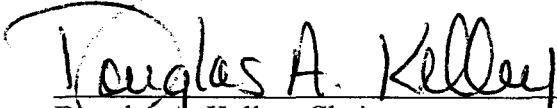
ISSUE TEN

If the JVVC develops a computer game that uses interactive simulations, graphics, and multimedia elements to convey the JVVC campaign message, may the JVVC provide the game as a free download on the JVVC website, or provide the game on a CD or DVD? May the computer game be provided if the JVVC charged a fee for the game? If the JVVC publishes campaign material on a CD or DVD (non-interactive, non-game) is the CD or DVD an item of value that cannot be offered for free to a voter?

OPINION

The Board is authorized to provide advisory opinions on the requirements of Chapter 10A. The distribution of items of value during a campaign is regulated by Minn. Stat. 211B.13. Therefore, this issue is outside of the realm of campaign finance law on which the Board can provide an opinion.

Issued 6/6/02



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

Cited Statutes

10A.01 DEFINITIONS.

Subd. 4. Approved expenditure. "Approved expenditure" means an expenditure made on behalf of a candidate by an entity other than the principal campaign committee of the candidate, if the 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 the candidate, the candidate's principal campaign committee, or the candidate's agent. An approved expenditure is a contribution to that candidate.

Subd. 13. Donation in kind. "Donation in kind" means anything of value that is given, other than money or negotiable instruments. An approved expenditure is a donation in kind.

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.13 ACCOUNTS THAT MUST BE KEPT.

Subdivision 1. Accounts; penalty. The treasurer of a political committee, political fund, principal campaign committee, or party unit must keep an account of:

(1) the sum of all contributions, except any donation in kind valued at \$20 or less, made to the committee, fund, or party unit;

10A.17 EXPENDITURES.

Subd. 2. Written authorization. An individual or association may not make an approved expenditure of more than \$20 without receiving written authorization from the treasurer of the principal campaign committee of the candidate who approved the expenditure stating the amount that may be spent and the purpose of the expenditure.

Subd. 4. Independent expenditures. An individual, political committee, political fund, principal campaign committee, or party unit that independently solicits or accepts contributions or makes independent expenditures on behalf of a candidate must publicly disclose that the expenditure is an independent expenditure. All written communications with those from whom contributions are independently solicited or accepted or to whom independent expenditures are made on behalf of a candidate must contain a statement in conspicuous type that the activity is an independent expenditure and is not approved by

the candidate nor is the candidate responsible for it. Similar language must be included in all oral communications, in conspicuous type on the front page of all literature and advertisements published or posted, and at the end of all broadcast advertisements made by that individual, political committee, political fund, principal campaign committee, or party unit on the candidate's behalf.

10A.20 CAMPAIGN REPORTS.

Subd. 3. Contents of report.

(b) The report must disclose the name, address, and employer, or occupation if self-employed, of each individual or association that has made one or more contributions to the reporting entity, including the purchase of tickets for a fund-raising effort, that in aggregate within the year exceed \$100 for legislative or statewide candidates or ballot questions, together with the amount and date of each contribution, and the aggregate amount of contributions within the year from each source so disclosed. A donation in kind must be disclosed at its fair market value. An approved expenditure must be listed as a donation in kind. A donation in kind is considered consumed in the reporting period in which it is received. The names of contributors must be listed in alphabetical order. Contributions from the same contributor must be listed under the same name. When a contribution received from a contributor in a reporting period is added to previously reported, unitemized contributions from the same contributor and the aggregate exceeds the disclosure threshold of this paragraph, the name, address, and employer, or occupation if self-employed, of the contributor must then be listed on the report.

Subd. 6a. Statement of independence. An individual, political committee, political fund, or party unit filing a report or statement disclosing an independent expenditure under subdivision 3 or 6 must file with the report a sworn statement that the disclosed expenditures were not made with the authorization or expressed or implied consent of, or in cooperation or in concert with, or at the request or suggestion of any candidate or any candidate's principal campaign committee or agent.

10A.27 CONTRIBUTION LIMITS.

Subd. 9. Contributions to and from other candidates.

(a) A candidate or the treasurer of a candidate's principal campaign committee must not accept a contribution from another candidate's principal campaign committee or from any other committee bearing the contributing candidate's name or title or otherwise authorized by the contributing candidate, unless the contributing candidate's principal campaign committee is being dissolved. A candidate's principal campaign committee must not make a contribution to another candidate's principal campaign committee, except when the contributing committee is being dissolved.

(b) A candidate's principal campaign committee must not accept a contribution from, or make a contribution to, a committee associated with a person who seeks nomination or election to the office of President, Senator, or Representative in Congress of the United States.

(c) A candidate or the treasurer of a candidate's principal campaign committee must not accept a contribution from a candidate for political subdivision office in any state, unless the contribution is from the personal funds of the candidate for political subdivision office. A candidate or the treasurer of a candidate's principal campaign committee must not make a contribution from the principal campaign committee to a candidate for political subdivision office in any state.

4503.0300 TERMINATION OF POLITICAL COMMITTEE OR POLITICAL FUND.

Subp. 2. Time of termination after making transfers between principal campaign committees. A principal campaign committee which makes a transfer or contribution to another principal campaign committee in anticipation of termination must complete its termination by the end of the reporting period in which the transfer or contribution was made