

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: Steve Keillor  
Keillor for State Senate Committee  
PO Box 23  
Askov, MN 55704

**RE: Public Subsidy Payments Potentially Available to Minor Party or  
Independent Candidates**

**ADVISORY OPINION 340**

**SUMMARY**

Minor party and independent candidates who sign a public subsidy agreement with the State of Minnesota prior to August 1, 2002 may qualify to receive a general account public subsidy payment after the 2002 state general election.

**FACTS**

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

1. You are a candidate for the office of state senate, have registered a principal campaign committee, and have signed a public subsidy agreement with the Board for that office.
2. You are running for office without party affiliation as an "independent". As an independent, your name will not appear on the state primary ballot but will be on the state general election ballot.
3. The Laws of 2001, 1<sup>st</sup> Special Session, Chapter 10, article 18, section 2, provides that public subsidy payments are made only to the winners of primary elections. This provision would prevent an independent candidate from receiving a public subsidy payment.

4. The Laws of 2002, Chapter 363, section 42, provides that candidates who sign a public subsidy agreement prior to August 1, 2002 will be eligible for public subsidy payments as provided in statute prior to the enactment of Laws of 2001, 1<sup>st</sup> Special Session, Chapter 10, article 18, section 2.

### ISSUE

Are minor party and independent candidates able to qualify for a public subsidy payment in 2002?

### OPINION

Yes. The provisions of Minn. Stat §10A.31, subd. 7, prior to the enactment of Laws of 2001, 1<sup>st</sup> Special Session, Chapter 10, article 18, section 2 set requirements for the distribution of the general account public subsidy payments. The statute distributes the general account payment according to a allocation method that provides a equal payment to candidates for the same office regardless of district or party affiliation. To receive a general account payment the candidate must: 1) have signed a valid public subsidy agreement. 2) have filed the affidavit of contributions required by Minn. Stat. §10A.323. 3) have an opponent at either the primary or general election. 4) receive at least 5% of the votes cast at the general election for that office if running for a state wide office, or at least 10% of the votes cast at the general election for that office if running for a legislative seat.

The requirements provided above will be used to determine if minor and independent party candidates who sign a public subsidy agreement prior to August 1, 2002 are eligible for a general account public subsidy payment. Minor party and independent candidates who sign a public subsidy agreement on or after August 1, 2002 are not eligible to receive a public subsidy payment.

Issued

June 6, 2002

  
\_\_\_\_\_  
Douglas A. Kelley, Chair

Campaign Finance and Public Disclosure Board

## Cited Statutes

### 10A.31 DESIGNATION OF INCOME TAX PAYMENTS

#### Subd. 7. Distribution of general account.

(a) Within two weeks after certification by the state canvassing board of the results of the general election, the board must distribute the available money in the general account, as certified by the commissioner of revenue on November 1 and according to allocations set forth in subdivision 5, in equal amounts to all candidates who:

- (1) have signed a spending limit agreement under section 10A.322;
- (2) have filed the affidavit of contributions required by section 10A.323;
- (3) were opposed in either the primary election or the general election; and

(4) are either a candidate for statewide office who received at least five percent of the votes cast in the general election for that office or a candidate for legislative office who received at least ten percent of the votes cast in the general election for that seat.

(b) The public subsidy under this subdivision may not be paid in an amount that would cause the sum of the public subsidy paid from the party account plus the public subsidy paid from the general account to exceed 50 percent of the expenditure limit for the candidate or 50 percent of the expenditure limit that would have applied to the candidate if the candidate had not been freed from expenditure limits under section 10A.25, subdivision 10. Money from the general account not paid to a candidate because of the 50 percent limit must be distributed equally among all other qualifying candidates for the same office until all have reached the 50 percent limit or the balance in the general account is exhausted.

### Minnesota Session Laws 2001, 1st Special Session, Chapter 10

Sec. 2. Minnesota Statutes 2000, section 10A.31, subdivision 7, is amended to read:

Subd. 7. [DISTRIBUTION OF GENERAL ACCOUNT.] (a) ~~Within two weeks after certification by the state canvassing board of~~ As soon as the board has obtained the results of the general primary election from the secretary of state, but no later than one week after certification of the primary results by the state canvassing board, the board must distribute the available money in the general account, as certified by the commissioner of revenue on ~~November~~ September 1 and according to allocations set forth in subdivision 5, in equal amounts to all candidates of a major political party whose names are to appear on the ballot in the general election and who:

- (1) have signed a spending limit agreement under section 10A.322;
- (2) have filed the affidavit of contributions required by section 10A.323;

(3) have filed the agreement required under paragraph (c); and

(3) (4) were opposed in either the primary election or the general election; and,

(4) are either a candidate for statewide office who received at least five percent of the votes cast in the general election for that office or a candidate for legislative office who received at least ten percent of the votes cast in the general election for that seat.

(b) The public subsidy under this subdivision may not be paid in an amount that would cause the sum of the public subsidy paid from the party account plus the public subsidy paid from the general account to exceed 50 percent of the expenditure limit for the candidate or 50 percent of the expenditure limit that would have applied to the candidate if the candidate had not been freed from expenditure limits under section 10A.25, subdivision 10. Money from the general account not paid to a candidate because of the 50 percent limit must be distributed equally among all other qualifying candidates for the same office until all have reached the 50 percent limit or the balance in the general account is exhausted.

(c) No later than one week after the primary results have been certified by the state canvassing board, a candidate wishing to receive money distributed by the board under this subdivision must execute and file an agreement with the board. The agreement must provide that:

(1) if the candidate does not expend or promise to disburse 50 percent of the money distributed by the board under this subdivision no later than the end of the final reporting period preceding the general election, then the candidate agrees to repay to the board the remainder of the money distributed to the candidate under this subdivision no later than six months following the date of the general election; and

(2) the candidate agrees to reimburse the board for all reasonable costs, including litigation costs, incurred in collecting any amount due following that date.

If the board determines that a candidate has failed to repay money as required by an agreement under this subdivision, the board may not distribute any additional money to the candidate under this subdivision until the entirety of the unexpended money is repaid or discharged.

## **Laws of 2002, Chapter 363**

### **Sec. 42. [TRANSITION.]**

A candidate who signed and filed with the campaign finance and public disclosure board a spending limit agreement for the election cycle ending December 31, 2002, before the effective date of this act is governed by the provisions of Minnesota Statutes 2000, section 10A.31, subdivision 7, as they existed before the amendments made by Laws

2001, First Special Session chapter 10, article 18, section 2, and this act, until the candidate signs a new spending limit agreement after the effective date of this act.