

State of Minnesota
Campaign Finance & Public Disclosure Board
Suite 190, 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: Corporations may contribute funds and services to a political committee or political fund registered to promote a constitutional amendment.

ADVISORY OPINION 343

SUMMARY

Political committees and political funds (committees) may receive corporate contributions if the committee limits its activities to supporting or opposing a constitutional amendment. Corporations do not need to register with the Board, or provide disclosure to political committees to which the corporation has contributed.

FACTS

As an attorney representing an entity organized as a 501 (c)(4) nonprofit corporation with the Internal Revenue Service (the Organization), you ask the Campaign Finance and Public Disclosure Board (the Board) for an advisory opinion based on the following facts:

1. The Organization does not currently have a political committee registered with the Board, but intends to create a political committee to support a statewide ballot question (constitutional amendment) that may be placed on the ballot by the Minnesota legislature at a future election.
2. The Organization anticipates receiving a donation from another entity that is registered as a 501 (c)(3) nonprofit corporation. The entity making the donation will request that the funds be forwarded to the political committee once it is registered with the Board. In its Report of Receipts and Expenditures to the Board, the political committee will report the entity that made the original donation and that the donation came through the Organization.

3. The Organization anticipates receiving a donation from a corporation that is to be used to support state ballot question political committees throughout the country. With the consent of the corporation making the donation, the Organization intends to forward part of the donation to the political committee that will be organized in Minnesota. The political committee would report the corporation that made the original donation, and that the donation came through the Organization.
4. The Organization is aware of an individual donor who wishes to make a contribution of stock to the political committee once it is registered. The political committee does not anticipate having a brokerage account that can accept or sell stock. With direction from the donor the Organization will accept and sell the stock, then forward the proceeds to the political committee once it is registered. The political committee would report the individual who donated the stock, and that the donation came through the organization.

ISSUE ONE

If the political committee accepts and reports the donations as described in the facts of this opinion, will it have violated the Minnesota Ethics in Government Act (Chapter 10A)?

OPINION

When determining the legality of a donation under the provisions of Chapter 10A it is necessary to consider the following questions: Is the donation from a prohibited source? Is the donation made in a way that attempts to circumvent the limits found in the provisions of Chapter 10A? Is the donation reported to the Board with the proper disclosure?

Although the Board cannot offer an advisory opinion on a statutory provision outside of its jurisdiction, it may reference statutes that affect the administration of Chapter 10A. Such a statute is Minn. Stat. §211B.15, subd. 4, which provides that corporations may make contributions or expenditures to promote or defeat a ballot question. In advisory opinion 257 (copy attached) the Board found that the specific authorization found for corporate involvement in ballot questions found in Chapter 211B extends to political committees registered under Chapter 10A to promote or defeat a constitutional amendment. The Board continues to believe that Minn. Stat. §211B, subd. 4, is the authoritative statute for corporate expenditures on ballot questions, and that in effect such activities are outside of Chapter 10A. It is important to note that a political committee that accepts corporate donations must limit its scope to the promotion or defeat of ballot questions. If a political committee that accepts corporate donations makes contributions to candidates, or makes independent expenditures for or against candidates, it will have violated the prohibition on corporate contributions to candidates provided in Minn. Stat. §211B.15, subs. 2 and 4.

The routing of donations through the Organization until the political committee is registered, or to make the conversion of stock to cash easier for the political committee, is allowable because restrictions in Chapter 10A against routing donations to a candidate through a third party do not apply to the Organization or the political committee that will be created. For example, the prohibition on earmarking contained in Minn. Stat. §10A.16 applies to contributions made with the condition that they be forwarded to a particular candidate; the statute does not extend to ballot questions. Similarly, Minn. Stat. §10A.29 which prohibits making a contribution through or on behalf of another individual or association in order to circumvent the contribution limits contained in Chapter 10A does not apply because there are no limits on corporate contributions to ballot question committees to be circumvented.

The disclosure of donations and expenditures provided by political committees registered with the Board to promote or defeat a constitutional amendment is the same as that required of a political committee created to elect or defeat candidates. That disclosure includes itemization of the name and address of any entity, including corporations, that contributes over \$100 to the committee. However, as explained in detail in Advisory Opinion 257, the Board does not view corporations as a type of unregistered association. This means that the disclosure required of unregistered associations in Minn. Stat. §10A.27, subd. 13 (a), does not apply to corporations.

Therefore, the anticipated contributions and reporting described in the facts of this opinion either meet the requirements of Chapter 10A, or are outside of its regulatory authority.

ISSUE TWO

If the Organization makes the donations described in the facts of this opinion, will the Organization need to register with the Board as a political committee?

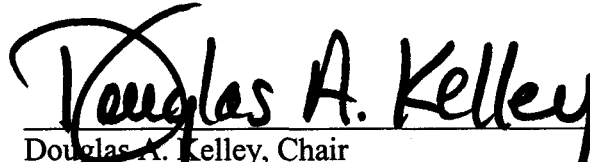
OPINION

No. A political committee that accepts contributions and/or makes expenditures to support or defeat a constitutional amendment must register with the Board within 14 days of its first contribution or expenditure in excess of \$100. A corporation contributing to the political committee need not disclose sources of income or other expenditures to the Board.

The Board notes that in Minnesota only the state legislature can place a constitutional amendment on the ballot. As provided in Minn. Stat. §10A.01, subd. 7 promoting a ballot question includes activities that qualify the question for placement on the ballot. Individuals employed by a political committee, or by the Organization, to influence the legislature to place a proposed amendment on the ballot are required to register with the Board as a lobbyist if the individual spends the amount of time or money provided in Minn. Stat. §10A.01, subd. 21 (a). Lobbyist must report on their lobbying disbursements

to the Board three times a year. Additionally a political committee or corporation that employs a lobbyist must submit a lobbyist principal report to the Board annually that contains the information required by Minn. Stat. §10A.04, subd. 6.

Issued 9/25/02

A handwritten signature in black ink that reads "Douglas A. Kelley". The signature is written in a cursive style with a large, looping initial "D".

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

Cited Statutes

10A.01 DEFINITIONS.

Subd. 7. **Ballot question.** "Ballot question" means a question or proposition that is placed on the ballot and that may be voted on by all voters of the state. "Promoting or defeating a ballot question" includes activities related to qualifying the question for placement on the ballot.

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.

10A.04 LOBBYIST REPORTS

Subd. 6. **Principal reports.**

(a) A principal must report to the board as required in this subdivision by March 15 for the preceding calendar year.

(b) The principal must report which of the following categories includes the total amount, rounded to the nearest dollar, spent by the principal during the preceding calendar year to influence legislative action, administrative action, and the official action of metropolitan governmental units:

(1) \$501 to \$50,000;

(2) \$50,001 to \$150,000; or

(3) \$150,001 to \$250,000.

(c) Beyond \$250,000, each additional \$250,000 constitutes an additional category, and each principal must report which of the categories includes the total amount spent by the principal for the purposes provided in this subdivision.

(d) The principal must report under this subdivision a total amount that includes:

(1) all direct payments by the principal to lobbyists in this state;

(2) all expenditures for advertising, mailing, research, analysis, compilation and dissemination of information, and public relations campaigns related to legislative action, administrative action, or the official action of metropolitan governmental units in this state; and

(3) all salaries and administrative expenses attributable to activities of the principal relating to efforts to influence legislative action, administrative action, or the official action of metropolitan governmental units in this state.

Subd. 7. **Financial records.** The board may randomly audit the financial records of lobbyists and principals required to report under this section.

10A.16 EARMARKING CONTRIBUTIONS PROHIBITED

An individual, political committee, political fund, principal campaign committee, or party unit may not solicit or accept a contribution from any source with the express or implied condition that the contribution or any part of it be directed to a particular candidate other than the initial recipient. An individual, political committee, political fund, principal campaign committee, or party unit that knowingly accepts any earmarked contribution is guilty of a gross misdemeanor.

10A.27 CONTRIBUTION LIMITS.

Subd. 13. **Unregistered association limit; statement; penalty.**

(a) The treasurer of a political committee, political fund, principal campaign committee, or party unit must not accept a contribution of more than \$100 from an association not registered under this chapter unless the contribution is accompanied by a written statement that meets the disclosure and reporting period requirements imposed by section 10A.20. This statement must be certified as true and correct by an officer of the contributing association. The committee, fund, or party unit that accepts the contribution must include a copy of the statement with the report that discloses the contribution to the board. This subdivision does not apply when a national political party contributes money to its affiliate in this state.

10A.29 CIRCUMVENTION PROHIBITED

Any attempt by an individual or association to circumvent this chapter by redirecting a contribution through, or making a contribution on behalf of, another individual or association is a gross misdemeanor.

ADVISORY OPINION 257

THIS ADVISORY OPINION IS PUBLIC DATA

pursuant to consent for release of information signed by the requester

Issued to: Greta Hesse Gauthier
Director
Minnesota Environmental Trust Fund Coalition
P. O. Box 127
Shafer, MN 55074

RE: Contributions from unregistered associations to ballot committee

ADVISORY OPINION # 257

SUMMARY

A corporation may make a contribution directly to a ballot question committee; an unregistered association other than a corporation must either register a political fund with the Board or provide a disclosure statement in lieu of registration in order to make the contribution. A lobbyist's activities in promoting the issues of the association the lobbyist is registered for and represents does not constitute a donation in kind to a political committee merely because the committee and the association support the same issues or because the association was involved in establishing the political committee.

FACTS

As the representative of a The Minnesota Environmental Trust Fund Coalition, a political committee registered with the Ethical Practices Board, (hereinafter referred to as "the Committee") you request an advisory opinion based on the following facts:

1. The Committee was established by a coalition of individuals and associations for the sole purpose of promoting a ballot question. It will not attempt to influence the nomination or election of any candidate.
2. The Committee wants to solicit and accept contributions from associations, including corporations, not registered with the Board.

3. Some members of the coalition which established the Committee are also lobbyist principals with legislative agendas of their own. In some cases, these individual coalition members may lobby for the ballot question as a part of their own agendas.
4. When coalition members use their own lobbyists to promote the ballot question, they will be doing so on their own behalf; not on behalf of the Committee. In these cases the lobbyists will register and report to the Board based on the coalition member they represent.
5. The Committee wants comply with all of the provisions of Minnesota Statutes, chapter 10A, when it accepts contributions or engages in its other activities.

ISSUE ONE

What requirements must be met under Minnesota Statutes, chapter 10A, for a corporation to make, and for the Committee to accept, a contribution of more than \$100?

OPINION

Minnesota Statutes, chapter 10A, imposes no requirements on a corporation making a contribution to the Committee. The Committee is required to keep records and report the contribution in the same way it records and reports all other contributions received.

The Committee was established and registered as a “political committee”, which is “any association . . . whose major purpose is to influence the nomination or election of a candidate or promote or defeat a ballot question”. Minn. Stat. § 10A.01, subd. 15. The Committee, which will not seek to influence the nomination or election of any candidate, is commonly referred to as a “ballot question committee”.

Chapter 10A also recognizes “unregistered associations”, which are groups or entities which are not political committees or political funds registered with the Board. Corporations are a particular type of unregistered association.

Generally, the treasurer of a political committee may not accept a contribution of more than \$100 from an unregistered association without receiving a prescribed additional disclosure statement at the same time. Minn. Stat. § 10A.22, subd. 7.

Donors are also restricted by a provision that no association other than a political committee may make contributions of more than \$100 in any one year unless the transfer is made from a political fund registered with the Board. Minn. Stat. § 10A.12, subd. 1.

While corporations may not make contributions to influence the nomination or election of candidates, Minn. Stat., Chapter 211B includes specific provisions related to corporate contributions to promote or defeat ballot questions. The Chapter 10A requirements for corporate contributions to ballot question committees must be determined in the context of the relevant Chapter 10A provisions, but also in the context of the statute granting corporations the right to participate in ballot question activities. Minn. Stat. § 211B.15, subd. 4, provides that:

“A corporation may make contributions or expenditures to promote or defeat a ballot question, to qualify a question for placement on the ballot unless otherwise prohibited by law, or to express its views on issues of public concern. A corporation may not make a contribution to a candidate for nomination, election, or appointment to a political office or to a committee organized wholly or partly to promote or defeat a candidate.”

While Chapter 211B is not within the jurisdiction of the Board to interpret, we must acknowledge its provisions when they bear on the interpretation of Chapter 10A, for which we are responsible.

We believe that the specific grant of authority to make contributions to promote or defeat ballot questions provided in Chapter 211B is irreconcilable with, and therefore supersedes, the Chapter 10A restrictions otherwise imposed on contributions from unregistered associations. Thus, a corporation may make a contribution directly to a ballot question committee free of any restriction found in Chapter 10A.

The Board first adopted this position in 1980 when it issued advisory opinion #73. In that opinion, the Board said:

”A corporation may spend money to promote or defeat ballot questions either by registering its own political fund or by contributing to an already registered political fund . . .”.

The Board sees no reason to deviate from its prior opinion. While opinion #73 dealt with contributions from a corporation to a political fund, we see no basis for a different rule relating to contributions to a political committee, as is the case considered in this opinion.

The Board notes, as did the Board in 1980, that the receiving committee will report the contribution and all expenditures resulting from it. We also note that the committee under consideration in this opinion will limit its activities to the ballot question. This restriction eliminates the possibility of a violation of the §211B.15 prohibition on corporate contributions to mixed purpose committees.

ISSUE TWO

What are the Minnesota Statutes, chapter 10A, requirements for an unregistered association other than a corporation to make a contribution of more than \$100 to the Committee?

OPINION

An unregistered association, other than a corporation, which wishes to make a contribution of more than \$100 to a ballot question committee must either (1) register a political fund with the Board and make the contribution through the political fund or (2) provide a disclosure statement with the contribution pursuant to Minn. Stat. § 10A.22, subd. 7, and the requirements set forth under Issue Three of this opinion. Whether both

options are available to a particular association depends on the sources of funds from which the association intends to make the contribution.

Only corporations benefit from the specific Chapter 211B authorization of ballot question contributions. Therefore, we must independently examine the requirements of Chapter 10A as they relate to non-corporate unregistered associations.

We first consider the unregistered association which intends to make contributions from membership fees or dues. Such an association may register a political fund of its own, directly transfer membership fees or dues to its fund under Minn. Stat. § 10A.12, subd. 5, and then make contributions from the fund. By registering a political fund, the association removes its political activities from those of an unregistered association and must comply with the requirements imposed on all political funds. This option is only available for the transfer of membership fees and dues, and only for the transfer of those moneys to the association's own political fund.

An unregistered association may also make a contribution to the Committee if it meets the disclosure statement requirements of Minn. Stat. § 10A.22, subd. 7. This is the only option available for an unregistered association which intends to make contributions from association receipts from other than membership fees or dues. This option is also available to associations that wish to make contributions from membership fees or dues without registering a political fund. Minn. Stat. § 10A.22, subd. 7.

To comply with the §10A.22 disclosure statement requirement, a statement meeting the requirements described in Issue Three of this opinion must be provided by the contributing association at the time the contribution is made. The receiving committee is required to file copies of each disclosure statement with its Report of Receipts and Expenditures for the period during which the contribution was received.

We finally note that any association which accepts contributions of more than \$100 to promote or defeat a ballot question must register as a political committee or must register a political fund as a result of accepting the contributions. See Minn. Stat. § 10A.01, subs. 15 and 16, and § 10A.14. For that reason, any contribution of more than \$100 to your committee from an association specifically raising money for the ballot question must come from a registered political committee or political fund.

ISSUE THREE

What must be disclosed in a statement given with a contribution by an unregistered association under Minn. Stat. § 10A.22, subd. 7, and what time period must the disclosure statement cover?

OPINION

Minn. Stat. § 10A.22, subd. 7, requires a statement which meets the disclosure and reporting period requirements of Minn. Stat. § 10A.20. The statement must be certified as true and correct by an officer of the contributing association and must cover the period

from 30 days preceding the contribution, or from the beginning of the reporting period during which the contribution is made, whichever is longer.

We have previously noted in this opinion that if an association raises more than \$100 to influence the nomination or election of a candidate as defined in Minnesota Statutes, chapter 10A, or to promote or defeat a Minnesota ballot question, it is subject to independent requirements that it register with the Board. Thus the procedure described in Minn. Stat. § 10A.22, subd. 7, and in this opinion, is not available to such an association.

For those associations whose major purpose is to influence nominations or elections at the local level, in other states, or at the federal level, all of the information specified in Minn. Stat. § 10A.20 must be provided on the disclosure statement. Examples of associations included in this group are political action committees or campaign committees involved in local, non-Minnesota, or federal elections . These associations may meet the disclosure requirement by completing the form which the Board provides to its registered political committees.

For unregistered associations for which political activity is not a major purpose, the disclosure requirements of Minn. Stat. § 10A.20 are not as readily applied. These associations consist primarily of unincorporated businesses which want to make limited contributions under Minn. Stat. § 10A.22, subd. 7 from their regular operating income.

The Board does not believe that the disclosure requirements applicable to this limited group of associations should be so burdensome that they become a virtual prohibition on the contributions permitted under Minn. Stat. § 10A.22, subd. 7. The Board will require all disclosure which will help inform the public about the campaign finance aspects of the contribution, but not that which is irrelevant to campaign finance and delves into the private transactions of the association.

Therefore, we set forth below the requirements for a disclosure statement to be provided by an unregistered association which does not have as a major purpose influencing political nominations or elections or promoting or defeating ballot questions and which is making its contribution solely from income derived in the ordinary course of its business. These requirements are not applicable to associations outside of this limited scope.

For such unregistered associations, the Minn. Stat. § 10A.22, subd. 7, statement must include:

1. The complete legal name of the contributing association and its full business address;
2. The name and address of the individual who authorized the contribution;
3. The name and address of each political committee or political fund to which a contribution has been made within the year, together with the amount and date of each transfer;

4. The sum of all such transfers made during the year through the date of the statement;
5. The name and address of the individual who certifies the statement to be true and correct.

ISSUE FOUR

Is there any difference in the requirements if the unregistered association makes its contribution by means of a donation in kind?

OPINION

No, the requirements stated above apply to all contributions including donations in kind.

ISSUE FIVE

Is there a limit to the number of times an unregistered association may make a contribution to a single committee using the Minn. Stat. § 10A.22, subd. 7, disclosure statement procedure?

OPINION

No. While the disclosure statement procedure limits contributions to three separate political committees or political funds during a year, it does not limit the number of contributions to each of those three entities. A new disclosure statement must be provided with each separate contribution made.

ISSUE SIX

May a political subdivision, including a local unit of government, make a contribution to the Committee, and may the Committee accept that contribution?

OPINION

Minnesota Statutes, chapter 10A, does not prohibit contributions by political subdivisions to political committees registered with the Board. However, the Board is not able to advise you or a political subdivision with regard to the many other statutes, charters, or regulations which may limit the political subdivision's activities. A political subdivision intending to make a contribution to the Committee is advised to consult with its own legal advisors.

If a political subdivision determines that it may make a contribution to the Committee, it must provide the same statement with the contribution that an unregistered association would be required to provide.

ISSUE SEVEN

If a member of the coalition which formed the Committee makes the Committee's ballot question one of its own priorities and has its own paid lobbyist undertake lobbying activities in support of the question, would those activities constitute a donation in kind to the Committee.

OPINION

No. Any entity may make any issue one of its lobbying priorities and lobby on behalf of that issue. As long as the lobbyist is registered on behalf of the entity and represents that entity rather than the Committee, the lobbying efforts do not constitute a donation in kind to the Committee.

Issued: January 24, 1997

Carolyn D. Rodriguez, Chair
Ethical Practices Board