

State of Minnesota
Campaign Finance and 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: Unregistered Associations Reporting Obligations; Contributions from
Separate Segregated Funds as Corporate Contributions**

ADVISORY OPINION 371

SUMMARY

The 30-day minimum reporting period for unregistered associations is in addition to the reporting periods set forth in Minn. Stat. § 10A.20. A contribution from a federally-recognized separate segregated fund containing corporate contributions to a Minnesota political organization (other than a ballot question committee) constitutes a prohibited corporate contribution under Minn. Stat. § 211B.15, subd. 2. There is no provision in Chapter 10A that provides for separate accounting for corporate funds held by an organizational contributor to a Minnesota political organization.

FACTS

As a firm representing entities that wish to participate in the Minnesota political process as unregistered associations under Minn. Stat. § 10A.27, subd. 13, you request an advisory opinion based on the following:

1. The organizations you represent wish to provide monetary contributions to no more than three groups per year.
2. The organizations you represent are federally-recognized separate segregated funds.
3. The separate segregated funds may be permitted under federal law to receive start-up and administrative expenses from a corporation without those items constituting a contribution under federal law.

ISSUE ONE

Does the 30-day reporting period for unregistered associations set forth in Minn. Stat. § 10A.27, subd. 13(b) supersede the year long and staggered reporting periods in Minn. Stat. § 10A.20, subd. 4?

OPINION ONE

No. The 30-day minimum reporting period for unregistered associations is in addition to the reporting periods set forth in Minn. Stat. § 10A.20.

The general campaign reporting requirements in Chapter 10A are set forth in Minn. Stat. § 10A.20, which requires that reports be filed for all entities required to report on January 31, with additional reports due depending on the nature of the reporting entity and whether it is an election year. Subdivision 4 of this section generally requires that every report cover the period from the last day covered by the previous report to seven days before the filing date. Minn. Stat. § 10A.20, subd. 4.

Section 10A.27, subd. 13 prohibits the treasurer of a political committee, political fund, principal campaign committee or party unit from accepting a contribution over \$100 from an unregistered association unless the contribution is accompanied by a written statement “that meets the disclosure and reporting period requirements imposed by section 10A.20.” (emphasis added)

Subpart (b) of subdivision 13 requires that the written statement provided by an unregistered association cover “at least” the 30 days immediately preceding and including the date on which the contribution was made. (emphasis added).

It appears that the legislature intended unregistered associations to comply with both reporting requirements, as section 10A.27, subd. 13(a) expressly incorporates the general reporting requirements of section 10A.20, and subd. 13(b) of section 10A.27 provides that in no event would the statement cover less than 30 days preceding the donation. The minimum 30-day reporting requirement ensures that at least some contribution history is revealed by an entity that may not have a previous report on which to base the statement as described in section 10A.20, subd. 4, and that might, for example, make a single large contribution on January 1. Without the 30-day minimum reporting period, an unregistered association that makes a January 1 contribution might provide a written statement with only that contribution reported.

In sum, the plain language of section 10A.27, subd. 13, which requires an unregistered association to comply with section 10A.20, and the legislature’s use of the term “at least” with reference to the 30-day reporting requirement, indicate that the reporting obligations are not mutually exclusive. The statutes work together to impose an additional obligation on unregistered associations to ensure that each report accompanying a contribution reflects the contribution history at least 30 days prior to the contribution.

ISSUE TWO

Is corporate assistance to a federally recognized separate segregated fund a “contribution” attributable to a Minnesota political organization receiving a contribution from the separate segregated fund?

OPINION TWO

Yes. As the requestor recognizes, the Board lacks jurisdiction to interpret Minn. Stat. § 211B.15, which prohibits corporate political contributions. However the Board must acknowledge the provisions of Chapter 211B when they bear on the reporting obligations under Chapter 10A, which is the context in which the requestor raises this issue.

Federal law recognizes entities called “separate segregated funds” as political committees set up by corporations and labor organizations that may make contributions to and expenditures on behalf of federal candidates and other committees. Minnesota law differs from federal law, in that section 211B.15 prohibits a corporation from making a contribution, or offering or agreeing to make a contribution, “directly or indirectly, of any money, property, free service of its officers, employees, or members, or thing of monetary value to a major political party, organization, committee, or individual to promote or defeat the candidacy of an individual for nomination, election, or appointment to a political office.” Minn. Stat. § 211B.15, subd. 2. There is a limited exception to this prohibition in Minn. Stat. § 211B.15, subd. 17, which permits a nonprofit corporation to provide limited administrative assistance to one political committee or fund that is associated with the nonprofit. This limited specific exception indicates that the very broad prohibition in Minn. Stat. §211B.15, subd. 2, includes any other corporate assistance in the form of start-up and administrative expenses. Similarly, under Chapter 10A, a contribution includes money, a negotiable instrument, or a donation in kind. Minn. Stat. § 10A.01, subd. 11.

Under the facts presented, the separate segregated fund consists of corporate funds. Therefore, a contribution from the separate segregated fund to a Minnesota political organization (other than a ballot question committee) constitutes a prohibited corporate contribution. Minn. Stat. § 211B.15, subd. 2.

ISSUE THREE

If corporate assistance as described above is a contribution, should a separate segregated fund’s disclosure statement report the method of accounting and segregation used to show that corporate funds did not commingle with the funds provided to the Minnesota political organization?

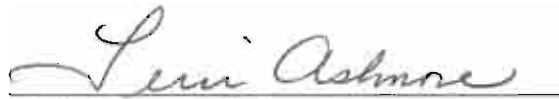
OPINION THREE

The question assumes that segregation of corporate funds by a contributor to a Minnesota political organization is permissible, which is not the case under Minnesota law. There is no provision in Chapter 10A that provides for separate accounting for corporate funds

held by an organizational contributor to a Minnesota political organization. Moreover, simply segregating such funds does not ensure that corporate funds do not indirectly benefit the Minnesota political organization. For example, if the separate segregated fund can use corporate funds for its internal administrative and personnel costs, leaving private contributions to be used for contributions to a Minnesota political organization, the corporate funds have indirectly benefited the Minnesota political organization. Because Minn. Stat. § 211B.15 includes in its prohibition indirect contributions by corporations to Minnesota political organizations, segregating corporate funds does not appear to be a permissible option.

Again, although the Board lacks jurisdiction to interpret Chapter 211B, where, as here, a question arises in the context of Chapter 10A reporting obligations, the Board must acknowledge the requirements of section 211B.15, which appear to prohibit the requestor's proposed course of action.

Issued November 22, 2005

A handwritten signature in cursive script, reading "Terri Ashmore", written in black ink over a horizontal line.

Terri Ashmore, Chair
Campaign Finance and Public Disclosure Board

10A.02

Subd. 12. **Advisory opinions.** (a) The board may issue and publish advisory opinions on the requirements of this chapter based upon real or hypothetical situations. An application for an advisory opinion may be made only by an individual or association who wishes to use the opinion to guide the individual's or the association's own conduct. The board must issue written opinions on all such questions submitted to it within 30 days after receipt of written application, unless a majority of the board agrees to extend the time limit.

(b) A written advisory opinion issued by the board is binding on the board in a subsequent board proceeding concerning the person making or covered by the request and is a defense in a judicial proceeding that involves the subject matter of the opinion and is brought against the person making or covered by the request unless:

- (1) the board has amended or revoked the opinion before the initiation of the board or judicial proceeding, has notified the person making or covered by the request of its action, and has allowed at least 30 days for the person to do anything that might be necessary to comply with the amended or revoked opinion;
- (2) the request has omitted or misstated material facts; or
- (3) the person making or covered by the request has not acted in good faith in reliance on the opinion.

(c) A request for an opinion and the opinion itself are nonpublic data. The board, however, may publish an opinion or a summary of an opinion, but may not include in the publication the name of the requester, the name of a person covered by a request from an agency or political subdivision, or any other information that might identify the requester, unless the person consents to the inclusion.

10A.20 Campaign Reports.

Subd. 2 Time for Filing

(a) The reports must be filed with the board on or before January 31 of each year and additional reports must be filed as required and in accordance with paragraphs (b) and (c).

(b) In each year in which the name of the candidate is on the ballot, the report of the principal campaign committee must be filed 15 days before a primary and ten days before a general election, seven days before a special primary and a special election, and ten days after a special election cycle.

(c) In each general election year, a political committee, political fund, or party unit must file reports 15 days before a primary and ten days before a general election.

Subd. 4 **Period of Report** A report must cover the period from the last day covered by the previous report to seven days before the filing date, except that the report due on January 31 must cover the period from the last day covered by the previous report to December 31.

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.

(b) An unregistered association may provide the written statement required by this subdivision to no more than three committees, funds, or party units in a calendar year. Each statement must cover at least the 30 days immediately preceding and including the date on which the contribution was made. An unregistered association or an officer of it is subject to a civil penalty imposed by the board of up to \$1,000, if the association or its officer:

(1) fails to provide a written statement as required by this subdivision; or

(2) fails to register after giving the written statement required by this subdivision to more than three committees, funds, or party units in a calendar year.

(c) The treasurer of a political committee, political fund, principal campaign committee, or party unit who accepts a contribution in excess of \$100 from an unregistered association without the required written disclosure statement is subject to a civil penalty up to four times the amount in excess of \$100.

211B.15 Corporate Political Contributions

Subd. 2. **Prohibited contributions.** A corporation may not make a contribution or offer or agree to make a contribution, directly or indirectly, of any money, property, free service of its officers, employees, or members, or thing of monetary value to a major political party, organization, committee, or individual to promote or defeat the candidacy of an individual for nomination, election, or appointment to a

political office. For the purpose of this subdivision, "contribution" includes an expenditure to promote or defeat the election or nomination of a candidate to a political office that 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, a candidate or committee established to support or oppose a candidate.

Subd. 17. Nonprofit corporation political activity. It is not a violation of this section for a nonprofit corporation to provide administrative assistance to one political committee or political fund that is associated with the nonprofit corporation and registered with the Campaign Finance and Public Disclosure Board under section 10A.14. Such assistance must be limited to accounting, clerical or legal services, bank charges, utilities, office space, and supplies. The records of the political committee or political fund may be kept on the premises of the nonprofit corporation.

The administrative assistance provided by the nonprofit corporation to the political committee or political fund is limited annually to the lesser of \$5,000 or 7-1/2 percent of the expenditures of the political committee or political fund.