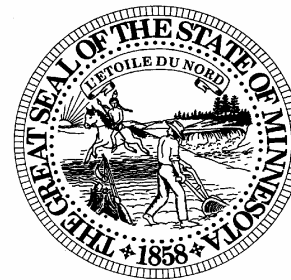


Minnesota

Campaign Finance and Public Disclosure Board



**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: Candidate participation in fundraising event; use of national political committee funds
by political committee registered in Minnesota.**

ADVISORY OPINION 385

SUMMARY

Minnesota Statutes Chapter 10A does not regulate a Minnesota officeholder's participation in fundraising activities for a national association not required to register with the Board. If the fundraising activities also constitute efforts to influence the officeholders election, then the costs of participation are campaign expenditures for the officeholder's principal campaign committee and a donation of the costs would be a contribution to the principal campaign committee.

Subject to other applicable statutory requirements and prohibitions, an association can theoretically make independent expenditures for a candidate that has participated in fundraising for the association. However, whether these expenditures are made with the implied consent of or in concert or cooperation with the officeholder can only be determined by examination of the actual facts surrounding the relationships and the expenditures.

Minnesota Statutes, Section 211B.15 prohibits direct and indirect participation in the Minnesota electoral process by Corporations. Since the subject association's funds consist of individual, corporate and political committee contributions, Section 211B may prohibit donation of funds to and acceptance by a committee registered with the Board.

An unregistered association that makes contributions to a Minnesota political committee must provide with each contribution detailed disclosure of all of the association's receipts and expenditures, consistent with the requirements of Minnesota Statutes, Section 10A.20.

FACTS

Requester requests an advisory opinion from the Campaign Finance and Public Disclosure Board based on the following facts which were provided by the requester or obtained by Board staff.

1. The requester is an unincorporated association (the Association) that represents officeholders affiliated with the party with which the Association is affiliated. The Association is not registered with the Minnesota Campaign Finance and Public Disclosure Board (the Board).
2. According to the requester, the mission of the Association includes assisting in the election of candidates for state office; using the talent of state officeholders to debate and shape public policy on issues affecting the states; and enabling state officeholders to represent political and policy interests at the national, state and local levels.
3. According to its internet web site, members of the Association include individuals and corporations classified into various levels who may work directly with officeholders, work in advisory capacities, or may play a significant role in the fundraising activities of the Association.
5. The Association conducts extensive fundraising events throughout the country and also solicits money by other means. Money raised goes into the general accounts of the Association and is used to support the components of its mission listed above. At the time funds are solicited or raised, there is no explicit dedication of the money for the benefit of a specific candidate.
6. The Association fundraisers may have featured guests whose attendance will be attractive to Association members and potential donors. The Association regularly pays the costs associated with these featured guests. Costs typically include travel, food, lodging and communication costs associated with participating in the event.
7. The Association raises money from individuals, corporations and other political action committees.
8. The Association intends to establish a Minnesota political committee (the Minnesota political committee) which will be registered with the Campaign Finance and Public Disclosure Board. The Association states that it will also have political committees in many other states "to support candidates for certain state level offices."
9. The Association intends to fund the Minnesota political committee by direct transfers of funds from the Association to the Minnesota political committee. The Association maintains separate bank accounts for contributions from individuals and corporations and intends to make transfers to the Minnesota political committee solely out of funds raised from individuals.
10. Under the Association's proposed plan, no Minnesota officeholder or candidate will participate in the allocation, budgeting or distribution of contributions received by the Association or in the allocation, budgeting or distribution of funds transferred to the Minnesota political committee.
11. The Association desires to make expenditures in Minnesota through its Minnesota political committee and to have those expenditures classified as independent expenditures under Minnesota Statutes Chapter 10A. To facilitate this classification, the Association may establish at the national level an "independent expenditure unit" which would hire consultants to make all decisions regarding independent expenditures in Minnesota. These consultants would operate "completely independently" of the Association staff and of any candidate on whose behalf expenditures would be made.
12. The Association states that Minnesota expenditures which it intends to be independent expenditures will be made "without the express or implied consent, authorization, or cooperation of,

and not in concert with or at the request or suggestion of any Minnesota candidate or any Minnesota candidate's principal campaign committee or agent".

For the purposes of this opinion, the Board accepts as fact that the expenditures will be made without the express consent or authorization or at the request or suggestion of any Minnesota candidate or any Minnesota candidate's principal campaign committee or agent. Whether the facts of the matter result in implied consent or constitute acting in cooperation or concert with the candidate is not a fact which can be stated, but a conclusion to be drawn from the surrounding facts.

The Association presents several questions based on the above facts. For the purpose of clarity and completeness, the Board has addressed all of the issues it believes are raised by the scenario described.

ISSUE ONE

May a Minnesota candidate or officeholder attend an Association fundraising event or otherwise help the Association raise funds? As a corollary, may a Minnesota candidate or officeholder solicit funds for or on behalf of the Association from sources that would be prohibited sources for an association registered with the Board under Minnesota Statutes Chapter 10A?

OPINION

Minnesota Statutes Chapter 10A does not regulate mere attendance at or participation in a fundraising event conducted by an entity not required to be registered with the Board. Neither does Minnesota Statutes Chapter 10A prohibit a Minnesota candidate or officeholder from soliciting funds from any source for an entity not registered with the Board.

ISSUE TWO

May the Association pay the costs associated with an officeholder's attendance at Association events and have those costs excluded from reporting and other requirements of Minnesota Statutes Chapter 10A.

OPINION

The payment of costs for an officeholder to attend an Association event are excluded from reporting and other requirements of Minnesota Statutes Chapter 10A unless the purpose of the event is to influence the nomination or election of the candidate. While the Association asserts that no event is for the purpose of influencing the nomination or election of a candidate, this determination cannot be made absent specific information regarding the event itself, such as the location of the event, who the attendees will be and other details. Other considerations might include whether a purpose of the event is to provide the officeholder with the opportunity to make contacts with others who will assist in influencing the officeholder's election or to raise funds on the officeholder's own behalf.

ISSUE THREE

If the officeholder chooses to pay his or her own costs associated with attending an Association fundraising event or with raising funds on behalf of the Association, should those costs be paid for with personal or with principal campaign committee funds. If they are paid with principal campaign committee funds, how should the expenditure be reported?

OPINION

If the officeholder concludes that the purpose of the event is not to influence the election of the officeholder, the costs of the event are not permitted campaign expenditures under Minnesota Statutes, Section 10A.01, subd. 9. Neither are the expenses permitted noncampaign disbursements under Minnesota Statutes, Section 10A.01, subd. 26. In such a case, the costs should not be paid by or reported by the officeholder's principal campaign committee.

However, if the purpose of the event is to influence the nomination or election of the officeholder, the costs may be paid by the principal campaign committee and reported as a campaign expenditure. If they are paid by the officeholder under this scenario, they would be considered an in kind contribution from the officeholder to the principal campaign committee.

ISSUE FOUR

If the Association creates the Minnesota political committee as described and, using its independent expenditure unit to make decisions, makes expenditures in Minnesota to advocate the election of the subject officeholder, will those expenditures be considered independent expenditures under Minnesota Statutes Chapter 10A?

OPINION

Based on the facts, there will be no express consent or authorization for these expenditures and they will not be made at the request or suggestion of the candidate or the candidate's principal campaign committee or agent.

On the limited facts presented, the Board does not find that there is evidence of implied consent for the subject expenditures, nor does it find that they are in concert with or cooperation with the candidate. The act of assisting the Association with fundraising, without more, does not constitute giving implied consent to the later expenditures.

If the actual facts of the events as they occur reveal more, such as an understanding that later expenditures depended on the candidate's fundraising success, or other relevant communication or understandings between the Association and the candidate, the Board could reach the opposite conclusion regarding the independence of the expenditures.

ISSUE FIVE

Are there any additional restrictions on the sources of funds that the Minnesota political committee may use for independent expenditures.

OPINION

While the question asks only about independent expenditures, this response applies to all funds spent by the Minnesota Committee for any purpose. This would include funds used by the Association to establish or hire consultants for the described "independent expenditure unit", the costs of which would be an in kind contribution from the Association to the Minnesota political committee.

Although Minnesota Statutes Chapter 211B is not within the jurisdiction of the Board to interpret, the Board does comment on that chapter when issues of its applicability arise in matters that are otherwise properly before the Board.

Minnesota Statutes, Section 211B.15 prohibits corporations from making direct or indirect contributions to political committees or political funds or candidates' principal campaign committees in Minnesota. It also prohibits corporations from making independent expenditures to influence the nomination or election of a Minnesota candidate.

In the past, the Board has opined that when an association that is partially funded by corporate contributions makes a donation to a Minnesota political committee or political fund, that contribution is a corporate contribution. The Board has further opined that the fact that the donor entity has separate bank accounts for corporate and individual contributions and draws its Minnesota donation from the "individual" pool does not insulate the entity from the corporate contribution prohibition.

If applicable, 211B.15 would prohibit the donation from the Association as well as the acceptance of the contribution by the Minnesota political committee. Violation of Section 211B.15 carries substantial penalties that are listed in the statutory reference at the end of this opinion.

ISSUE SIX

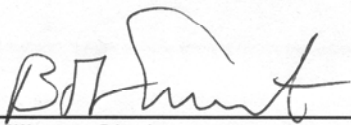
Although not raised by the requester, the Board wishes to address the Minnesota reporting requirements that would apply to the Association and its Minnesota political committee if they determine that the prohibitions of Minnesota Statutes, Section 211B.15 do not apply and they decide to proceed with the described plan.

OPINION

The Association is an unregistered association under Minnesota Statutes Chapter 10A. Section 10A.27, subd. 13, provides that a Minnesota political committee may not accept contributions in excess of \$100 from an unregistered association unless the donor association provides, along with the contribution, a written report meeting the disclosure requirements of Minnesota Statutes, Section 10A.20, including the reporting period requirements of 10A.20. Violation of this provision provides for a \$1000 fine against the donor entity and a fine of up to four times the violation amount against the Minnesota political committee.

For specific reporting requirements, the requestor is directed to Minnesota Statutes, Section 10A.20. The requester should understand that the statute requires disclosure from January 1, 2006 through the date of each contribution. Among other things, the disclosure must include: the name, address, and employment information for any donor of more than \$100 to the Association; the name and address of the payee, and the date and description of the payment for any payments totaling more than \$100 to a single payee. While these are key disclosure requirements, the statute includes substantially more and is reprinted in the citations of this opinion.

Issued August 15, 2006



Bob Milbert, Chair
Campaign Finance and Public Disclosure Board

CITED STATUTES AND ADMINISTRATIVE RULES

10A.20 Campaign reports.

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Subd. 3. Contents of report.

(a) The report must disclose the amount of liquid assets on hand at the beginning of the reporting period.

(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.

(c) The report must disclose the sum of contributions to the reporting entity during the reporting period.

(d) The report must disclose each loan made or received by the reporting entity within the year in aggregate in excess of \$100, continuously reported until repaid or forgiven, together with the name, address, occupation, and principal place of business, if any, of the lender and any endorser and the date and amount of the loan. If a loan made to the principal campaign committee of a candidate is forgiven or is repaid by an entity other than that principal campaign committee, it must be reported as a contribution for the year in which the loan was made.

(e) The report must disclose each receipt over \$100 during the reporting period not otherwise listed under paragraphs (b) to (d).

(f) The report must disclose the sum of all receipts of the reporting entity during the reporting period.

(g) The report must disclose the name and address of each individual or association to whom aggregate expenditures, including approved expenditures, have been made by or on behalf of the reporting entity within the year in excess of \$100, together with the amount, date, and purpose of each expenditure and the name and address of, and office sought by, each candidate on whose behalf the expenditure was made, identification of the ballot question that the expenditure was intended to promote or defeat, and in the case of independent expenditures made in opposition to a candidate, the candidate's name, address, and office sought. A reporting entity making an expenditure on behalf of more than one candidate for state or legislative office must allocate the expenditure among the candidates on a reasonable cost basis and report the allocation for each candidate.

(h) The report must disclose the sum of all expenditures made by or on behalf of the reporting entity during the reporting period.

(i) The report must disclose the amount and nature of an advance of credit incurred by the reporting entity, continuously reported until paid or forgiven. If an advance of credit incurred by the principal campaign committee of a candidate is forgiven by the creditor or paid by an entity other than that principal campaign committee, it must be reported as a donation in kind for the year in which the advance of credit was made.

(j) The report must disclose the name and address of each political committee, political fund, principal campaign committee, or party unit to which contributions have been made that aggregate in excess of \$100 within the year and the amount and date of each contribution.

(k) The report must disclose the sum of all contributions made by the reporting entity during the reporting period.

(l) The report must disclose the name and address of each individual or association to whom noncampaign disbursements have been made that aggregate in excess of \$100 within the year by or on behalf of the reporting entity and the amount, date, and purpose of each noncampaign disbursement.

(m) The report must disclose the sum of all noncampaign disbursements made within the year by or on behalf of the reporting entity.

(n) The report must disclose the name and address of a nonprofit corporation that provides administrative assistance to a political committee or political fund as authorized by 211B.15, subdivision 17, the type of administrative assistance provided, and the aggregate fair market value of each type of assistance provided to the political committee or political fund during the reporting period.

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Subd. 13. Third-party reimbursement. An individual or association filing a report disclosing an expenditure or noncampaign disbursement that must be reported and itemized under subdivision 3, paragraph (g) or (l), that is a reimbursement to a third party must report the purpose of each expenditure or disbursement for which the third party is being reimbursed. An expenditure or disbursement is a reimbursement to a third party if it is for goods or services that were not directly provided by the individual or association to whom the expenditure or disbursement is made. Third-party reimbursements include payments to credit card companies and reimbursement of individuals for expenses they have incurred.

Minnesota Statutes, Section 10A.27 Contribution Limits

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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 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.

Subdivision 1. Definitions. For purposes of this , "corporation" means:

- (1) a corporation organized for profit that does business in this state;
- (2) a nonprofit corporation that carries out activities in this state; or
- (3) a limited liability company formed under chapter 322B, or under similar laws of another state, that does business in this state.

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. 3. Independent expenditures. A corporation may not make an independent expenditure or offer or agree to make an independent expenditure to promote or defeat the candidacy of an individual for nomination, election, or appointment to a political office. For the purpose of this subdivision, "independent expenditure" means an expenditure that is not made with the authorization or expressed or implied consent of, or in cooperation or concert with, or at the request or suggestion of, a candidate or committee established to support or oppose a candidate.

. . .

Subd. 6. Penalty for individuals. An officer, manager, stockholder, member, agent, employee, attorney, or other representative of a corporation acting in behalf of the corporation who violates this may be fined not more than \$20,000 or be imprisoned for not more than five years, or both.

Subd. 7. Penalty for corporations. A corporation convicted of violating this is subject to a fine not greater than \$40,000. A convicted domestic corporation may be dissolved as well as fined. If a foreign or nonresident corporation is convicted, in addition to being fined, its right to do business in this state may be declared forfeited.