State of Minnesota

Campaign Finance & Public Disclosure Board

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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: Noncampaign Disbursements for expenses of the transition of a constitutional office to a new officeholder.

ADVISORY OPINION 391

SUMMARY

Certain expenses related to the transition of a constitutional office to a newly elected official may be paid by the new official's principal campaign committee and reported as noncampaign disbursements.

FACTS

As the legal representative for the winner of the 2006 election for a constitutional office, you ask the Campaign Finance and Public Disclosure Board (the "Board"), for an advisory opinion based on the following facts:

1. The newly elected constitutional officer has assembled a transition team to prepare for the change in administration of the office to which the candidate was elected.

2. In order to be prepared to assume the new office, it will be necessary for the candidate to incur costs for staff, legal and accounting services, training, equipment, supplies and other items.

3. The officer is, by operation of the State Constitution, a member of certain state boards charged with various duties (more fully described in the non-public version of this advisory opinion). The officer would like to use principal campaign committee funds to pay the costs of attending a conference related to the constitutional duties of the office. The conference is designed to teach best practices an other subjects related to the duties and will take place in another state.

4. The state does not provide any budget for an incoming constitutional officer to pay costs associated with the transition of administration of the office.

5. The candidate's principal campaign committee, has funds available that could be used to support efforts of the transition.

INTRODUCTION

In general, the use of principal campaign committee funds is controlled by Minnesota Statutes, section 211B.12. That statute limits use of such funds to activities intended to influence elections and to those noncampaign disbursements defined in Minnesota Statutes, section 10A.01, subd. 26. The particular noncampaign disbursement that is relevant and applicable to this opinion is 10A.01, subd. 26(10), which permits use of principal campaign committee funds for payment "of the candidate's expenses for serving in public office, other than for personal uses".

The Board has addressed variations of the present question on at least three previous occasions.

In Advisory Opinion 253, the Board was asked whether a newly elected, non-incumbent, candidate could use principal campaign committee funds to pay for items under the noncampaign disbursement category of "expenses for serving in public office". The Board recognized that once elected, a candidate may need to incur costs directly related to serving in office even before the actual first date of sworn service. The Board permitted the use of principal campaign committee funds for these costs as noncampaign disbursements.

The Board again considered the issue in November, 2002, in Advisory Opinion 346 which is public data pursuant to a release of information signed by the requester. In Opinion 346, the Governor-elect asked whether his transition team could use principal campaign committee funds to support the transition of the new administration into the Governor's office. The Board opined that many of the specified costs that the Governor-elect wanted to pay with committee funds were, in fact, expenses for serving in public office under Minnesota Statutes, Section 10A.01, subd. 26(10) (note: at that time the provision was numbered as part 9).

Finally, under its authority to promulgate administrative rules, the Board gave Advisory Opinion 346 the authority of law by enacting Minnesota Rules, Part 4503.0900, subpart 1. F. to create the following new noncampaign disbursement:

> "costs of running a transition office for a winning gubernatorial candidate during the first six months after election".

While the cited rule is not directly applicable to the facts of the present Advisory Opinion, the reasoning behind the rule and the advisory opinions that preceded it is sound and is and applicable to constitutional offices beyond that of the Governor.

ISSUE ONE

May the Committee use its funds to pay for staff salaries of the transition?

OPINION

Yes. In order to transition into a new office without interruption of government services, a constitutional officer may need to employ full time staff for a wide variety of activities. Staffing costs related to establishing the candidate's new office and assuming responsibilities from the outgoing official may be classified and reported as noncampaign disbursements under Minn. Stat. §10A.01, subd. 26, (10). This Opinion does not sanction the use of principal campaign committee funds to pay a salary to the newly elected constitutional officer.

ISSUE TWO

May the Committee use its funds to pay for accounting and legal services of the transition?

OPINION

Yes. Costs of ensuring that the transition operates within various statutory provisions and is able to account for its expenses are necessary costs. Accounting and legal services used in the transition may be classified and reported as noncampaign disbursements under Minn. Stat. §10A.01, subd. 26, (10). Such costs should be reported separately from any legal or accounting expenditures made for the benefit of the candidate's principal campaign committee. Costs on behalf of the principal campaign committee should be reported as noncampaign disbursements under Minn. Stat. §10A.01, subd. 26, (1).

ISSUE THREE

May the Committee use its funds to pay for the purchase or leasing of office equipment (cell phones, computers, photocopying services, etc.) of the transition?

OPINION

Yes. To effectively transition to the new office, the candidate will need equipment sufficient to establish an operating staff and office prior to actually assuming the duties of the position. The cost of purchase or lease of office equipment used for the transition should be reported as noncampaign disbursements under Minn. Stat. §10A.01, subd. 26, (10).

The requester should be aware that equipment purchased for the transition with principal campaign committee funds becomes the property of the principal campaign committee. Any equipment purchased and classified as a noncampaign disbursement cannot be later used for campaign purposes. The Committee may wish to lease the necessary office equipment to avoid the problems associated with tracking the use, and eventual disposal, of equipment after the transition period is concluded.

ISSUE FOUR

May the Committee use its funds to pay for books, periodicals, supplies and materials used in establishing the office and conducting operations during the transition?

OPINION

Yes, assuming that the items and materials purchased are used in the ordinary course of operation of the transition process and that the items would be considered expenses of serving in office for an official who had already taken office. The allowable costs of purchasing these items are the reasonable costs necessary to carry out the function of the transition. The costs should be reported as noncampaign disbursements under Minn. Stat. §10A.01, subd. 26, (10).

ISSUE FIVE

May the Committee use its funds to pay for travel, lodging, and conference fees and expenses connected with the candidate attending an annual conference of area associations and another training event, both of which are specifically and closely related to the official's performance of public duties?

OPINION

Yes. Based on the information provided (which is not detailed in this public version of this Advisory Opinion), costs of attending the annual conference and of receiving the specified training are related to serving in the office to which the candidate was elected. Such costs may be paid for by the Committee and reported as noncampaign disbursements under Minn. Stat. §10A.01, subd. 26, (10).

ISSUE SIX

May the Committee use its funds for other travel, lodging, or fees to attend events or training related to the office to which the candidate was elected?

OPINION

Yes. As long as there is no reimbursement from the state or the from the office to which the candidate was elected for the expense to be incurred, the Committee may pay the expense if the item would be considered an expense of serving in public office for a holder of that office. Such costs may be paid for by the Committee and reported as noncampaign disbursements under Minn. Stat. §10A.01, subd. 26, (10).

GENERAL LIMITATIONS

Under normal circumstances, payment of costs for transitioning into a new office should not be required for a period of more than six months following the date of the candidate's election to the new office. The opinions expressed herein are subject to this limitation.

The Board reiterates that the noncampaign disbursement for "expenses for serving in public office" may not include expenses for personal use. This restriction applies to the Board's opinions in this matter.

Expenses of serving in office include the ordinary and reasonable expenses of those activities that are expected or required of a public official, or that enhance the official's ability to serve. That standard is equally applicable to costs to be incurred by a newly elected constitutional officer during the transition into office.

Issued November 28, 2006

Bob Milbert, Chair
Campaign Finance and Public Disclosure Board

Cited Statutes and Rules

10A.01 DEFINITIONS.

Subd. 26. **Noncampaign disbursement**. "Noncampaign disbursement" means a purchase or payment of money or anything of value made, or an advance of credit incurred, or a donation in kind received, by a principal campaign committee for any of the following purposes:

. . .

(1) payment for accounting and legal services;

. . .

(10) payment by a principal campaign committee of the candidate's expenses for serving in public office, other than for personal uses;

. . .

Minnesota Rules
4503.0900 NONCAMPAIGN DISBURSEMENTS.

Subpart 1. **Additional definitions**. In addition to those listed in Minnesota Statutes, section 10A.01, subdivision 26, the following expenses are noncampaign disbursements:

. . .

F. costs of running a transition office for a winning gubernatorial candidate during the first six months after election.