

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: Activities Related to a Promoting or Defeating a Ballot Question; Political Fund
Registration Requirement**

ADVISORY OPINION 395

SUMMARY

A statement identifying a constitutional amendment ballot question and explaining reasons that passage of the amendment would benefit the state of Minnesota is an action to promote a ballot question. If an organization spends more than \$100 to promote a ballot question, it must register a political fund with the Board and make its ballot question expenditures through that fund.

FACTS

As the representative of a non-profit corporation registered in Minnesota ("the Organization"), you ask the Campaign Finance and Public Disclosure Board (the "Board"), for an advisory opinion based on the following facts:

1. The board of the Organization recently voted to support a constitutional amendment that will be on the general election ballot this year.
2. The Organization's board has approved a statement of the reasons the board believes passage of the amendment would benefit Minnesota.
3. Neither the board's resolution voting to support the amendment nor the statement it approved expressly urges voters to vote for the amendment.
4. The Organization plans to put the statement on its internet site and to publish the statement in its newsletter.
5. The newsletter would be distributed based on its regular distribution list.

Introduction

A constitutional amendment is an item that will be on the general election ballot and may be voted on by all voters in the state. As such, it falls within the definition of a “ballot question” under Minnesota Statutes, Section 10A.01, subd. 7.

The Organization is an association under Minnesota Statutes, Section 10A.01, subd. 6, and, as such, is within jurisdiction of statutes governing political activities of associations. Under Minnesota Statutes, Section 10A.12, an association may not “make any . . . expenditure to promote or defeat a ballot question unless the . . . expenditure is made from a political fund.”

This Advisory Opinion request presents two questions which are addressed separately below.

Issue One

Do the actions proposed to be undertaken by the Organization constitute actions for the purpose of promoting a ballot question?

Opinion

Where the words of a statute are clear, the Board interprets them according to their common meaning. The phrase “to promote or defeat a ballot question” as applied to the purpose of an expenditure is clear. An action to promote a ballot question is an action intended to make it more likely that the ballot question will pass when voted on in the general election.

Although the Board does not have the specific text of the statement that the Organization proposes to publish, sufficient facts have been presented to characterize the statement.

It appears that the statement will reference the constitutional amendment ballot question and the fact that voters will be able to vote on the measure in the November elections. The statement will also indicate that the Organization’s board is in favor of passage of the amendment. Finally, the statement will explain why the Organization’s board believes that passage of the measure would benefit Minnesota.

Taken as a whole, the proposed statement is clearly intended to positively influence the chances for the ballot question to pass. This constitutes promotion of the ballot question and brings the activities within the jurisdiction of Chapter 10A. Express words such as “vote for” are not required in order to make a statement of a type that promotes a ballot question.

Issue Two

Do the actions proposed to be undertaken by the Organization require it to organize and register a political fund under Minnesota Statutes Chapter 10A?

Minnesota Statutes, Section 10A.12, states that “any” ballot question expenditure by an association must be made through a political fund. However, under Minnesota Statutes, Section 10A.14, a political fund is not required to register with the Board until after it has received contributions or made expenditures in excess of \$100.

The Board has never assumed jurisdiction over an association or its related political fund until the fund has met the statutory threshold requiring registration with the Board. However, once

an association spends more than \$100 to promote a ballot question, it must register a political fund and the Board's jurisdiction is established. Thus, the Organization's obligation to register and report depends on whether it has made expenditures in excess of \$100 to produce the proposed statement and to publish it online and in the Organization's newsletter.

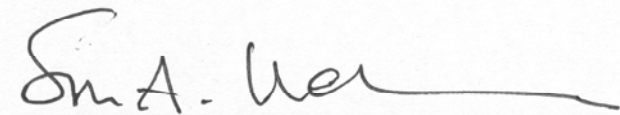
When considering the level of expenditures required to trigger a registration requirement, the actual cost incurred by an entity is examined.¹ The value of time spent by unpaid volunteer board members of the Organization is not included in the cost. The cost of paid staff time in preparation and board adoption of the statement is included. Additionally, a reasonable portion of the cost of publishing the Organization's web site and its newsletter must be attributed to the total cost of publication of the statement.

The facts do not provide a sufficient basis on which to render an opinion as to whether the Organization's proposed activities will meet the expenditure threshold that would require it to register a political fund with the Board. It will be up to the Organization to make that determination.

The Board notes that most corporate political activity is prohibited by Minnesota Statutes, Section 211B.15. However, corporate activity related to ballot questions is specifically permitted under that statute. The Board has stated its opinion in the past that the 211B authorization for this corporate ballot question activity does not relieve a corporation from the Chapter 10A requirements regarding formation of a political fund to conduct ballot question activities. The Board sees no basis for a different conclusion in the immediate matter.

¹ The Board recognizes that when considering the value of an in-kind donation provided by one registered entity to another, a different valuation analysis is used; based on the fair market value of the benefit received by the recipient of the in-kind donation.

Issued April 15, 2008

A handwritten signature in dark ink, appearing to read "Sven A. Wehrwein", with a long horizontal line extending to the right.

Sven Wehrwein, Chair
Campaign Finance and Public Disclosure Board

Cited Statutes and Rules

10A.01 DEFINITIONS.

. . . .

Subd. 6. **Association.** "Association" means a group of two or more persons, who are not all members of an immediate family, acting in concert.

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.

10A.12 POLITICAL FUNDS.

Subdivision 1. **When required.** An association other than a political committee or party unit may not contribute more than \$100 in aggregate in any one year to candidates, political committees, or party units or make any approved or independent expenditure or expenditure to promote or defeat a ballot question unless the contribution or expenditure is made from a political fund.

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10A.14 REGISTRATION.

Subdivision 1. **First registration.** The treasurer of a political committee, political fund, principal campaign committee, or party unit must register with the board by filing a statement of organization no later than 14 days after the committee, fund, or party unit has made a contribution, received contributions, or made expenditures in excess of \$100.

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211B.15 CORPORATE POLITICAL CONTRIBUTIONS.

Subdivision 1. **Definitions.** For purposes of this section, "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. 4. **Ballot question.** 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.

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