

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: Treatment of telephone survey costs as campaign expenditures or noncampaign disbursements.

ADVISORY OPINION 403

SUMMARY

Where a telephone survey does not clearly provide a service to the voters who are called and where the survey provides the candidate who conducts it with information about voters positions on issues, as well as information by which to gauge the potential for obtaining contributions from those voters, the costs of the survey must be reported as campaign expenditures on the candidates periodic Reports of Receipts and Expenditures.

FACTS

As an incumbent state legislator, who is a candidate under Minnesota Statutes Chapter 10A, you ask the Campaign Finance and Public Disclosure Board, ("the Board"), for an advisory opinion based on the following facts:

1. Beginning in the spring of 2009 and continuing through the summer of 2010 you intend to retain a consultant or consulting firm to make telephone survey calls to your constituents on your behalf. These calls will involve various legislative issues.
2. You intend to treat the costs of these calls as noncampaign disbursements for constituent services through adjournment sine die of the 2010 legislature. For the 60 days following adjournment sine die, you intend to report these costs as 50% noncampaign disbursements for constituent services and 50% campaign expenditures. Thereafter, if the calls continue, you would report the costs as 100% campaign expenditures.
3. Your treatment of the costs as noncampaign disbursements for constituent services is based in part on the statutory definition of a noncampaign disbursement, which includes the cost of preparing and distributing a suggestion or idea solicitation to constituents.
4. During a call it is possible that a constituent may offer to make a contribution to your principal campaign committee.

5. At the end of a call, if the person being called by the firm or consultant has not offered to make a contribution, the person making the call may have a reasonable belief based on the conversation that the person may be inclined to make a donation, if asked to do so.
6. You ask whether under the described facts a contribution volunteered by the constituent may be accepted and, if so, how the cost of the call must be reported.
7. You also ask whether a contribution solicited by the consultant may be accepted and, if so, how the cost of the call must be reported.

Issue

May the costs of a series of telephone survey calls made to constituents regarding legislative issues be reported as noncampaign disbursements when each call will generate information about the constituent and each call has the potential to result in a contribution to the candidate?

Opinion

The requester begins by assuming as fact that the series of telephone calls proposed are constituent services and, thus, may be reported as noncampaign disbursements with some possible exceptions. However, the question of whether a particular activity is a constituent service is one that can only be addressed in the context of the specifics of the activity itself. Thus, to answer the requester's questions about reporting the costs involved, it is necessary first to determine whether the described activity constitutes a constituent service.

The concept of services for a constituent arises in Minnesota Statutes, Section 10A.01, subd. 26, which lists categories of spending that are considered noncampaign disbursements. Noncampaign disbursements are reported separately from campaign expenditures and do not count toward the candidate's campaign spending limit. Because they do not count toward the spending limit, candidates are typically careful to classify as noncampaign disbursements every item that is appropriately so classified.

Likewise, because noncampaign disbursements do not count toward the spending limit, the Board has exercised care in monitoring the extension of their use to categories of spending that do not closely fit within the limits of the specified noncampaign disbursement definitions.

When construing statutes, the Board is required to follow established rules of statutory interpretation. Among these is the concept that words mean what they say. In the case of the noncampaign disbursement under review, it applies to "services for a constituent". Key to application of the definition is that the activity under review must provide a "service".

The Board clarified the requirement that the act of an incumbent must provide a service in Minnesota Rules 4503.0100, subp. 6 which states:

"'Services for a constituent' or 'constituent services' means services performed or provided by an incumbent legislator or constitutional officer for the benefit of one or more residents of the official's district"

A typical definition of what is a "service" is found in *Merriam-Webster's Collegiate Dictionary*, which includes among the definitions "help, use, benefit"; "contribution to the welfare of

another”; and “a helpful act”. The dictionary definition matches common usage in which a service consists of doing something for the benefit of another.

Typical services performed by legislators include helping constituents with problems with state agencies or state benefits. The Board has extended the concept of constituent services to cover annual reports of legislators to their constituents. While such a service is not requested by the recipient, there is a long tradition and expectation that part of what a legislator does for his or her constituents is to keep them informed.

The Board previously expressed its opinion that the costs of printing and distributing idea or suggestion cards for constituents’ use did not provide a service to the constituent and should be reported as campaign expenditures. Subsequently, the legislature added language of specificity to §10A.01, subd. 26(6) stating that noncampaign disbursement treatment may be given to constituent services, “including the costs of preparing and distributing a suggestion or idea solicitation to constituents”.

The Board understands that providing an easy way for constituents to provide feedback to a legislator may be a constituent service and defers to the legislature on this determination. However, the facts of the immediate request go farther than any previously recognized scope of constituent services and farther than the language of the statute and rule.

Minnesota Statutes Chapter 10A, as it relates to campaign finance, starts with the proposition that all principal campaign committee spending is for campaign expenditures. It then carves out a number of specific exceptions. Under the rules of statutory interpretation where there is a general provision – that campaign spending is to be reported as campaign expenditures – and there are limited exceptions – the specifically listed noncampaign disbursements – the administrative agency interpreting the statute is to apply the general provision broadly and the exceptions narrowly. Thus, the Board is required to guard against expansion of the noncampaign disbursement categories unless the legislature makes it clear that such expansion is intended. Noncampaign disbursements for constituent services, in particular, must be narrowly drawn because this category of spending is available only to incumbents rather than to all candidates.

The facts of this request present several reasons to distinguish the proposed survey plan from other activities that have been properly classified as constituent services.

First, an unsolicited telephone call from a candidate to a constituent would not generally be considered to be a service to that constituent, even if during the course of the call the constituent is given an opportunity to express his or her opinion on selected issues. Thus, the activity does not meet the common meaning of providing a service.

The telephone survey is different from distribution of cards or running of small advertisements that the constituent may clip out and send to a legislator with suggestions. The suggestion cards provide an easy way for the constituent to contact the legislator *should the constituent wish to do so*. They do not impose a contact from the legislator’s agent on the constituent.


The more significant problem with calling the telephone survey plan a constituent service activity is demonstrated by the very different nature of a survey call from a distributed suggestion card that will presumably be returned only in limited cases.

A telephone call gives the caller valuable information about the constituent; a potential voter. The facts strongly suggest that the caller will identify the legislator on whose behalf the call is made. The caller will likely be able to ascertain whether the voter already knows the legislator. The caller will be able to ascertain whether the voter is willing to discuss issues with this particular legislator's agent, or simply hangs up. If the voter participates in the survey, it will be possible to classify the voter's positions on issues, giving the candidate a base of information that will indicate whether the voter's positions are similar to or different from those of the candidate. While the project is referred to as a survey, the Board sees little to distinguish it from polling; a typical campaign activity.

The facts suggest that the calls will be structured in a way that may lead the voter to suggest a donation to the candidate's principal campaign committee. If that does not occur, it is expected that by the end of the call, the candidate's agent will have enough information about the voter to determine whether the voter is a potential donor. Whether the donation is solicited in the same call, or data recorded during the call is used later for fundraising solicitations, or other campaign purposes is not relevant. The relevant fact is that the call provides a body of information about the voter that the candidate can use for election purposes. If there is an element of service to the voter who is called during the proposed survey, it is far outweighed by the benefit to the candidate in obtaining information about a potential voter and donor.

It is important that use of noncampaign disbursements not be extended beyond the narrow bounds provided by the legislature. In the immediate case, the facts presented take the proposed telephone survey project outside the definition of a constituent service. If the calling project is undertaken, its costs should be reported as campaign expenditures.

Issued March 3, 2009



A. Hilda Bettermann, Chair
Campaign Finance and Public Disclosure Board

Relevant 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:

. . .

(6) services for a constituent by a member of the legislature or a constitutional officer in the executive branch, including the costs of preparing and distributing a suggestion or idea solicitation to constituents, performed from the beginning of the term of office to adjournment sine die of the legislature in the election year for the office held, and half the cost of services for a constituent by a member of the legislature or a constitutional officer in the executive branch performed from adjournment sine die to 60 days after adjournment sine die;

. . .

4503.0100 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part apply to this chapter and Minnesota Statutes, chapter 10A. The definitions in chapter 4501 and Minnesota Statutes, chapter 10A, also apply to this chapter.

. . .

Subp. 6. **Services for a constituent; constituent services.** "Services for a constituent" or "constituent services" means services performed or provided by an incumbent legislator or constitutional officer for the benefit of one or more residents of the official's district, but does not include gifts, congratulatory advertisements, charitable contributions, or similar expenditures.

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