

**State of Minnesota
Campaign Finance & Public Disclosure Board
Suite 190, Centennial Building. 658 Cedar Street. St. Paul, MN 55155-1603**

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REQUESTER OF THE ADVISORY OPINION, WHICH IS NON PUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)**

ADVISORY OPINION 405

SUMMARY

A “political committee” is an association whose “major purpose” is to influence the nomination or election of candidates. Determination of an association’s major purpose is made on a case-by-case basis and may consider the association’s public statements of its purpose. A political committee must register with the Board once it has received contributions of more than \$100 or has made contributions or expenditures of more than \$100.

FACTS

As an attorney for the a national association (“the National Association”) which is a political organization registered with the Internal Revenue Service under Internal Revenue Code section 527, you ask the Campaign Finance and Public Disclosure Board, (“the Board”), for an advisory opinion on behalf of the National Association based on the following facts:

1. In 2002, the National Association registered with the Internal Revenue Service its election of tax status as a political organization under Section 527 of the Internal Revenue Code. It has maintained that status to the present.
2. The National Association receives donations from individuals and corporations across the country.
3. The donations to the National Association are not made with any specification as to how they must be used.
4. The National Association proposes to use some of its funds to broadcast communications in Minnesota that include the names of Minnesota state candidates.
5. The communications will not expressly advocate the election or defeat of the named candidates.
6. The expenditures will be made solely by the National Association without the authorization or expressed or implied consent of, not in cooperation or in concert with, and not at the request or suggestion of a candidate, a candidate’s principal campaign committee or agent.

7. The National Association maintains a Web site at which it publishes information about itself and its activities.
8. The home page of the National Association web site states that its mission is to elect candidates at the state level who support its political agenda.
9. An “About Us” page at the National Association web site states that its mission is to elect state candidates and that it does this by recruiting candidates and providing them with support.
10. In a response to a question from Board staff regarding the major purpose of the National Association, an attorney for the National Association stated:

“The first and foremost purpose of [the National Association] is to promote and incorporate our principles in public policy debates. This is most efficaciously accomplished by electing more like-minded candidates at the state level in various states. But this purpose is also accomplished by issue advocacy communications for which [the National Association] engages its resources as it deems them appropriate.”
11. The National Association also states that it has not determined if it will become active in Minnesota and if it does, what its mission will be.

**Issue
(as stated by the requester)**

If the National Association were to broadcast communications that mention the name of Minnesota state candidates without expressly advocating their election or defeat, would the National Association be required to register as a political committee or a political fund or be otherwise regulated under Minnesota Statutes Chapter 10A?

Opinion

The National Association frames its request in terms of hypothetical political messages that it may broadcast in Minnesota. It asks if the broadcast of those messages would require it to register a political organization and be regulated by the provisions of Minnesota Statutes Chapter 10A.

While the National Association’s emphasis on the content of its intended messages may be relevant in examining whether registration with the Board is required, an analysis of the association itself must be completed first in order to determine which of two very different statutory schemes requiring registration is applicable.

Political committees and political funds

Minnesota law recognizes two types of associations other than party units and candidates’ principal campaign committees. Those organizations are (1) a political committee and (2) any other association involved in the political process that is not a political committee. Since the two types of organizations are mutually exclusive, the requester must, as a matter of law, fall within one of the categories.

In Minnesota, a political committee is defined as an association whose “major purpose” is to influence the election of a candidate or candidates. Minnesota Statutes, Section 10A.01, subd. 27. Any association that does not meet the “major purpose” test is not a political committee.

The state’s interest in regulating the political activity of an association whose major purpose is to influence the state’s elections is significantly stronger than the state’s interest in regulating intermittent political activity of an association that exists for other purposes. As a result, the registration requirements applicable to the two types of associations under Minnesota Statutes Chapter 10A are significantly different from one another.

An association that is a political committee must register itself with the Board; that is, the organization is the registered entity. The threshold for registration of a political committee is the receipt or expenditure of more than \$100.

An association that is not a political committee, but engages in specified regulated spending in Minnesota must establish a fund, typically a bank account with a treasurer, and that fund, rather than the entire association, registers with the Board. The association then reports on the activities of its political fund, but not on the financial activities of the entire association. The threshold for registration of a political fund by an association that is not a political committee is the making of more than \$100 in contributions to or approved expenditures on behalf of a candidate, or the making of more than \$100 in independent expenditures expressly advocating the election or defeat of a candidate.

Determining whether an association must register with and report to the Board begins with an examination of whether the association is a political committee or not. Once that determination has been made, the association’s political activities are examined in the context of the applicable statutes to determine whether a registration threshold has been met.

The Definition of a Political Committee

In construing statutes, the Board is bound by the statutory Canons of Construction and by common law. Minnesota Statutes, Section 645.08 (1) provides the most basic rule of statutory construction:

“words and phrases are construed according to rules of grammar and according to their common and approved usage”.

The Board also looks to legislative intent, and is guided by the statutory presumptions provided in Minnesota Statutes, Section 645.17. Among those presumptions are the following:

“the legislature does not intend to violate the Constitution of the United States or of this state” and;

“when a court of last resort has construed the language of a law, the legislature in subsequent laws on the same subject matter intends the same construction to be placed upon such language”

With the rules of construction and legislative intent in mind, the Board must determine whether the National Association is a political committee.

A “political committee” is “an association whose major purpose is to influence the nomination or election of a candidate or to promote or defeat a ballot question, other than a principal campaign committee or a political party unit”.

Clearly the National Association is not a principal campaign committee, which is a candidate’s election committee, and it is not a party unit. It will not be involved in actions to promote or defeat ballot questions. The question then becomes:

Is the National Association’s major purpose to influence the nomination or election of candidates?

Under federal law, a “political committee” is required to register and report if it makes expenditures or raises contributions exceeding a specified level. Expenditures and contributions under federal law, are defined based on whether they are “for the purpose of . . . influencing” a nomination or election.

The U.S. Supreme court found the language impermissibly broad since the phrase “political committee” could apply to any group and the “for the purpose of influencing” language could include speech that would be protected by the First Amendment. However, the Court noted that the lower courts had construed the words “political committee” more narrowly. The Court said that “to fulfill the purposes of the [federal] Act, [the words “political committee”] need only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of candidates.”

The Court went on to say that:

“Expenditures of candidates and of ‘political committees’ so construed can be assumed to fall within the core area sought to be addressed by congress. They are, by definition, campaign related.” *Buckley v Valeo*, 424 U.S. 1 at 79.

In Minnesota, no such construction of the term “political committee” is required since the legislature included the narrowing “major purpose” language into the statutory definition.

The Minnesota Supreme Court considered the definitions of political committee and political fund in *MCCL v Campaign Finance and Public Disclosure Board*, A04-2376, 2005. The matter was before the Court on a certified question from the United States District Court.

In reviewing construction of the Minnesota definition of a “political committee”, the Minnesota Supreme Court, commenting on the federal district court opinion said:

“Therefore, consistent with *Buckley*, the federal district court construed the definitions of ‘political committee’ to require that an organizations major propose be the nomination or election of a candidate . . . “

The Minnesota Court continued by recognizing that the *Buckley* construction of a “political committee” as an organization whose “major purpose” was to influence the nomination or election of a candidate results in an assumption that all spending by such an organization is, by definition, campaign related.

Specifically, the Minnesota court stated:

”Thus, as to expenditures, *Buckley* held that *all* expenditures of political committees (groups under the control of a candidate or the major purpose of which is the nomination

or election of a candidate) are subject to regulation because they are campaign-related by definition . . .” *MCCL*, *Supra*.

Because of the similarity of Minnesota’s statutes to those construed by the Supreme Court in *Buckley*, the Minnesota Court indicated that it considered the *Buckley* court’s construction to be controlling with respect to the Minnesota definitions of political committee and political fund.

Having recognized the difference between a political committee and an organization whose major purpose is other than to influence the nomination or election of candidates, the Minnesota Court answers the certified question by stating that the phrase “to influence the nomination or election of a candidate . . . *may* be narrowly construed” [emphasis added] to limit application of the phrase where necessary to avoid constitutional problems of vagueness and overbroad application.

While the Board recognizes that a narrowing construction is necessary when applying the “to influence” language to an association whose major purpose is something other than to influence the nomination or election of candidates, both *Buckley* and *MCCL* make it clear that such a narrowing construction is not constitutionally required when the association under consideration is one whose major purpose is to influence the nomination or election of candidates.

Application of the Definition of a Political Committee

In Minnesota, only an association “whose major purpose” is to influence the nomination or election of candidates is a political committee. The plain language of the Minnesota definition suggests that an association will have only one major purpose and other purposes will be subordinate to that purpose.

The determination of an association’s major purpose requires the flexibility of case-by-case analysis. This analysis may take place through the advisory opinion process prior to the time that the association engages in political activities or through the investigatory process of a compliance action after the association’s political activities have commenced. For an example of an investigative determination, see *The Matter of the Complaint of Richard V. Novack Regarding Minnesota Majority* (http://www.cfboard.state.mn.us/bdinfo/investigation/120208MN_Majority.pdf) in which this Board found that the association’s major purpose was something other than to influence the nomination or election of candidates and registration with the Board was not required.

An analysis of an association’s purpose may begin with statements that the association makes about itself. In the immediate case, the Board finds those statements to be determinative. The Association’s statement of its mission, as reproduced in item number 8 of the facts and further explained in item 9, makes it clear that this is a single purpose association. It may achieve its purpose by various means, but its major purpose is to influence state elections for offices below that of governor.

Further examination of the Association’s strategy from its “About Us” page explains that by electing state officials the Association helps build a group of candidates who can move on to national office. The page further details the process the Association uses to determine which candidates to help and the types of assistance it can provide.

The Association’s attorney, in response to a Board inquiry stated that “[t]he first and foremost purpose of the National Association is to promote and incorporate our organization’s principles

in public policy debates.” However, this statement is not convincing given the extensive public statements the Association makes about itself outside the context of an advisory opinion request.

The Political Committee’s Registration Requirement

Having determined that the Association is a political committee under Minnesota statutes, the Board next examines the registration requirements applicable to it. Consistent with *Buckley* and *MCCL*, the Board is entitled to assume that all spending by the Association in Minnesota is for political purposes.

A political committee in Minnesota is required to register with the Board if it makes a contribution of more than \$100 to an entity registered with the Board, receives contributions in excess of \$100, or makes expenditures in excess of \$100. Minnesota Statutes, Section 10A.14, subd. 1.

A “contribution” is any money or item of value given to or by a political committee. Minnesota Statutes, Section 10A.01, subd. 11. An “expenditure” is a purchase or payment to influence the nomination or election of candidates. Since a political committee, by definition exists for the purpose of influencing the nomination or election of candidates, all of its spending is assumed to be for that purpose.

Minnesota’s registration threshold amounts suggest that if the National Association begins activities in Minnesota, it will almost immediately be required to register a Minnesota political committee and comply with the requirements of Minnesota Statutes Chapter 10A.

The National Association’s election of Section 527 tax status also constitutes evidence of its major purpose. An association electing Section 527 tax status is voluntarily self-identifying itself as a “political organization”. A political organization is an association “organized and operated primarily for the purpose of . . . directly or influencing or attempting to influence the selection, nomination, election, or appointment” of a person to federal, state, or local office. Since the National Association limits its activities to state level elections, its election of Section 527 status places it squarely within the definition of a political committee under Chapter 10A.

The Registration, Disclosure, and Limits Provisions of Minnesota Statutes Do Not impose a Significant Burden on the Association’s First Amendment Rights

It is important to recognize that the requirements of Minnesota Statutes Chapter 10A with which the National Association will be required to comply include only minimal limitations on its freedom to act in the political arena.

To assist the National Association in complying with Chapter 10A, the Board provides the following summary of requirements with which the National Association must comply if it begins activities in Minnesota.

To function as a political committee in Minnesota, the National Association will be required to open a separate bank account for its Minnesota operating entity and establish recordkeeping that separates Minnesota financial activities from those undertaken in other states.

Only contributions specifically designated for the Minnesota political committee may be placed in its separate depository account.

The Minnesota political committee may accept contributions from individuals and from party units or other political committees or funds registered with the Campaign Finance Board without limit as to time or amount.

Corporations are prohibited from donating to political committees in Minnesota. Minnesota Statutes, Section 211B.15. A Minnesota political committee is prohibited from accepting contributions aggregating more than \$100 from an association not registered with the Board without significant statutorily prescribed disclosure by the donor. Minnesota Statutes, Section 10A.27, subd. 13).

Because of the limit on transfers from unregistered associations, the National Association (which itself will not be registered with or reporting to the Board) may not directly transfer more than \$100 and may not provide free services (a donation in kind) valued at more than \$100 to the Minnesota political committee. Since the National Association's funds include corporate contributions, it is possible that *any* transfer of money or services from the National Association to the Minnesota political committee would be prohibited by §211B.15. Minnesota Statutes Chapter 211B is not within the jurisdiction of the Board to interpret; however, §10A.02, subd. 6, permits the Board to provide information about the limits impose by §211B.15.

Solicitation of donations to the Minnesota political committee may be made by the National Association as long as the Minnesota political committee reimburses the National Association for its proportionate share of the cost of the solicitation. The National Association may solicit directly for the Minnesota political committee (subject to the requirement that it be paid for the cost of doing so). Donors should be directed to make their donations payable to the Minnesota committee. The National Association could also include the Minnesota committee in a general solicitation as long as donors direct their donations to the Minnesota committee.

It is not permissible for the operators of the National Association to decide which undesignated funds go to the Minnesota committee and which go to the National Association's general treasury. In that case, the Board would consider the undesignated donation to be a donation to the National Association which then further donates it to the Minnesota committee in violation of Minnesota Statutes, Section 10A.27, subd. 13.

The National Association may provide administrative and other support to the Minnesota committee as long as it is reimbursed for the fair market value of any support or services provided.

The Minnesota committee will have no limits on the amount it can spend on independent expenditures, issues ads, or for general purposes. It will be limited on the amount it can donate in money or support directly to candidates, but may contribute without limit to party units and other political committees or funds registered with the Board (except that it may not donate to a political party legislative caucus committee while the legislature is in session).

The Minnesota committee will be required to file periodic reports disclosing all of its receipts and spending, itemizing transactions that exceed \$100.

Issued June 2, 2009

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

Statutory Citations

10A.01 DEFINITIONS.

. . .

Subd. 27. **Political committee.** "Political committee" means an association whose major purpose is to influence the nomination or election of a candidate or to promote or defeat a ballot question, other than a principal campaign committee or a political party unit.

Subd. 28. **Political fund.** "Political fund" means an accumulation of dues or voluntary contributions by an association other than a political committee, principal campaign committee, or party unit, if the accumulation is collected or expended to influence the nomination or election of a candidate or to promote or defeat a ballot question.

U.S. Code, Title 26, Section 527. Political organizations

(a) **General rule.** A political organization shall be subject to taxation under this subtitle only to the extent provided in this section. A political organization shall be considered an organization exempt from income taxes for the purpose of any law which refers to organizations exempt from income taxes.

. . .

(e) Other definitions

For purposes of this section—

(1) Political organization

The term "political organization" means a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function.

(2) Exempt function

The term "exempt function" means the function of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed. Such term includes the making of expenditures relating to an office described in the preceding sentence which, if incurred by the individual, would be allowable as a deduction under section 162 (a).