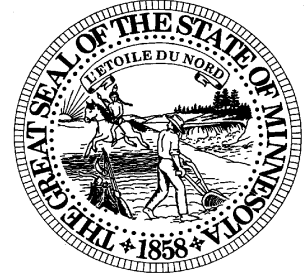


Minnesota

*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)**

Advisory Opinion 412

SUMMARY

Whether a candidate's contribution to, or support of, an independent expenditure political committee or fund affects the independence of expenditures by that political committee or fund benefitting other candidates depends on the relationship between the supporting candidate and the candidate benefited by the subject independent expenditure.

FACTS

As the representative of an association ("the Association"), you ask the Campaign Finance and Public Disclosure Board for an advisory opinion based on the following facts:

1. The Association is considering registering as an independent expenditure political committee or registering an independent expenditure political fund with the Board under the provisions of Laws of Minnesota, 2010, Chapter 397.
2. The proposed independent expenditure political committee or fund will make independent expenditures supporting or opposing state legislative candidates.
3. Several candidates whose races would not be the subject of independent expenditures made by the new independent expenditure political committee or fund have approached the Association to determine if they could assist with fundraising. This group of candidates is referred to as "the supporting candidates" in this opinion.
4. As a result of these requests, you ask the Board to for an opinion addressing the questions set forth below.

BOARD ASSUMPTIONS

When the Board considers independent expenditures, it always refers to the controlling statute, §10A.01, subd. 18, which states that:

"Independent expenditure" means an expenditure expressly advocating the election or defeat of a clearly identified candidate, if the expenditure is made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, any candidate or any candidate's principal campaign committee or agent. An independent expenditure is not a contribution to that candidate.

It is obvious from the definition of independent expenditure that questions of express or implied consent and of agency must always be considered. No hypothetical fact situation will exactly match the way events occur in the real world. Conversations and relations cannot be predicted or defined in detail. For this reason, the Board cautions the requester and readers of advisory opinions related to independent expenditures. The result reached in an advisory opinion will be applicable to a real-world situation only to the extent that every relevant fact, event, and relationship in the real-world situation is described and considered in the advisory opinion request.

In this opinion, the hypothetical facts do not mention any relationship or any communication between any of the supporting candidates and any candidate who will benefit from the described independent expenditures. For the purposes of this opinion, the Board assumes that no such relationship exists and that no conversations relevant to the question of agency or consent have occurred. If relationships exist or conversations take place between a supporting candidate and a candidate who benefits from the subject independent expenditures, the Board would be required to examine those factors to determine if the independence of the resulting expenditure is destroyed.

For the purposes of this opinion, the Board assumes that there is no element of agency between any supporting candidate and any candidate who would benefit from an independent expenditure made by the Association's political committee or fund.

QUESTION ONE

May the supporting candidates donate to the independent expenditure political committee or fund as individuals?

OPINION

Chapter 10A does not restrict the right of an individual to donate to any political committee or fund of the individual's choice. Whether such a contribution affects the independence of a resulting independent expenditure is subject to the analysis described in the Board Analysis above.

QUESTION TWO

May a supporting candidate's principal campaign committee donate to the Association's independent expenditure political committee or fund? Does the answer change if the supporting candidate signed a Public Subsidy Agreement for the 2010 election cycle?

OPINION

Use of principal campaign committee funds in general is governed by Minnesota Statutes Section 211B.12 and 211B.01(6). Initially, the requester must determine whether a candidate's principal campaign committee donation to the Association's independent expenditure political committee or fund is permitted under Chapter 211B. If the requester determines that such a donation is permitted Chapter 211B, then further inquiry into the effect of Chapter 10A is required.

Chapter 10A does not specifically prohibit a candidate's principal campaign committee from donating to a political committee or fund. Thus, in most situations if Chapter 211B permits such a donation, it will not be precluded by Chapter 10A.

However, Minnesota Statutes Section 10A.25(3a), which prohibits candidate's principal campaign committees from making independent expenditures, applies to all candidates who sign a Public Subsidy Agreement. By signing a Public Subsidy Agreement, a candidate agrees that the candidate's principal campaign committee will not make independent expenditures.

When a candidate has agreed that his or her principal campaign committee may not make independent expenditures, that candidate is not permitted to avoid the agreement by making a donation to another entity which, by definition, will use the money to make independent expenditures.

QUESTION THREE

May the supporting candidates assist with fundraising by (a) headlining a fundraising event or (b) writing a letter on behalf of the new independent expenditure political committee or fund?

OPINION

Providing services without compensation, including headlining a fundraising event, is not recognized as a contribution under Chapter 10A. Thus, a supporting candidate's hosting of a fundraising event for the independent expenditure political committee or fund would not result in a reportable transaction or in a violation of Chapter 10A.

Similarly, an individual candidate's writing a letter to be used by the independent expenditure political committee or fund will not be recognized as a contribution; will not result in a reportable transaction; and, thus, cannot result in a violation of Chapter 10A. Spending money to reproduce or distribute the letter, however, would result in a contribution to the independent expenditure political committee or fund.

Issued October 5, 2010

/s/ Bob Milbert
Bob Milbert, Chair
Campaign Finance and Public Disclosure Board