

**State of Minnesota**  
**Campaign Finance & Public Disclosure Board**  
Suite 190, Centennial Building. 658 Cedar Street. St. Paul, MN55155-1603

**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: Use of Information from Campaign Finance and Public Disclosure Board Records**

**ADVISORY OPINION 418**

**SUMMARY** Data gathered from reports and filings submitted to the Board may be used by a nonprofit noncommercial association to distribute issue advocacy material, solicit membership in the association, and solicit contributions. An association may, for a fee, assist a nonprofit noncommercial association in the use of the data for a noncommercial purpose.

**FACTS**

As the legal representative of associations who wish to comply with the provisions of 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. You represent two associations each of which wish to communicate with individuals for the purpose of providing issue advocacy communications, solicitations for memberships in the association, and solicitations for contributions to the association or to a purpose the association supports. Both associations are recognized by the Internal Revenue Service as non-profit organizations under I.R.S. Code Sections 501(c)(3) or 501(c)(4). For the purpose of this request, neither association engages in efforts to influence the nomination or election of candidates in Minnesota.
2. You represent a third association that does not typically communicate with individuals directly, but which provides services that assist other associations with their outreach and educational communications. The assistance may take the form of mailing list and database information acquisition and analysis that helps focus outreach communications to a receptive audience. The association is recognized by the Internal Revenue Service as a non-profit corporation under I.R.S. Code Section 501(c)(4).
3. The two associations described in Fact 1 have asked the association described in Fact 2 to develop information on individuals that will be used in communication and outreach efforts. The information will be extracted from a database obtained from the Board of individuals who have contributed to Minnesota political committees and funds, candidates, and political party units.
4. You are aware of the Board’s Advisory Opinion 244 which permitted the use of Board data on a revenue generating website because the website contained information about Minnesota political activity and was therefore determined by the Board to have a political

purpose. You believe that the type of communications that are listed in Fact 1 should also be viewed as having a political purpose and that the approval of the use of Board data in Advisory Opinion 244 should be extended to the purposes identified in this request.

### **Introduction**

The requester poses a number of questions and makes several legal arguments regarding the issues raised by the request. However, the issues may be simplified and presented as two questions that will provide both the requester and other similarly situated associations with guidance on the use of data included in reports filed with the Board.

Minnesota Statutes Section 10A.35 prohibits "use" of data filed with the Board when that "use" is for a "commercial purpose." The requester essentially asks the Board to define what constitutes "use" of Board data as contemplated by the statute and, further, to determine when that use is for a "commercial purpose."

### **Issue One**

What constitutes "use" of data from reports filed with the Board?

### **Opinion**

The use of data acquired from reports and documents filed with the Board (Board data) is regulated by Minnesota Statutes, section 10A.35. This statute provides:

Information copied from reports and statements filed with the board, other than reports and statements filed by lobbyists and lobbyist principals, may not be sold or used by an individual or association for a commercial purpose. Purposes related to elections, political activities, or law enforcement are not commercial purposes. An individual or association who violates this section is subject to a civil penalty of up to \$1,000. An individual who knowingly violates this section is guilty of a misdemeanor.

Two approaches to the definition of "use" or "used" have been suggested. The first would result in a broad definition of the term. Under that approach, any time Board data is incorporated into a product or a form of information would be "use" of Board data. The second approach would define "use" of Board data more narrowly to mean using the names and addresses of individuals and associations that are contained within Board data for the purpose of contacting those same individuals and associations.

The Board has previously adopted the second approach to the definition of "use" of Board data. In Advisory Opinion 244, the Board permitted publication of Board data on a website for the purpose of informing the public about political contributions made in Minnesota. The website was to be supported by paid advertising and, thus, was a commercial venture. Although the Board did not articulate an analysis of the difference in between using the data to create a product and using the data to contact the subjects of the data, Advisory Opinion 244 implicitly adopted a position that including Board data in a commercial product is not "use" of the data as contemplated by Minnesota Statutes Section 10A.35.

Additional support for interpretation of the word "use" to mean use for the purpose of contacting subjects of the data is provided by the provision of the statute itemizing certain exclusions from

the prohibition on use of the data. Each of the exclusions contemplates use of the data to contact the subjects of the data.

The Board reaffirms the guidance on "use" of Board data that was first suggested in Advisory Opinion 244: Board data is "used" within the meaning of Minnesota Statutes Section 10A.35 when the names and addresses that constitute the data are used to contact subjects of the data.

Therefore, an association, including a for-profit association, may filter, improve or implement the use of Board data for a fee. Preparing or assisting in the use of Board data so that it more efficiently or effectively contacts individuals and associations does not change the use of the Board data into a commercial purpose. Similarly, if an association's use of Board data to communicate individuals or associations is not for a commercial purpose it may contract with another association, including a for-profit association, to carry out the communication.

Vendors providing enhanced Board data to associations are advised that the best practice would be for them to notify the end-users of the data of the commercial use prohibition. Use of Board data for a prohibited purpose results in a violation of Minnesota Statutes, section 10A.35, even if the end-user is unaware of the prohibition.

## **Issue Two**

Are the uses of Board data proposed by the requestor of this opinion for a "commercial purpose" that is prohibited in Minnesota Statutes 10A.35?

## **Opinion**

In Issue One, the Board defined use of Board data as use for the purpose of contacting the subjects of the data. In Issue Two the question becomes the type of communication that may be undertaken when Board data is used to contact individuals and associations. If the communication provided through the use of Board data is for a "commercial purpose" it will exceed the limited use of Board data provided in Minnesota Statutes, section 10A.35.

Chapter 10A does not define "commercial purpose". The word "commercial" appears more than 800 times in other Minnesota statutes not regulated by the Board. In most cases it is not defined. However, Minnesota Statutes Section 325E.26, which regulates telephone solicitations done by automatic dialing devices, is instructive. This statute provides guidance on when such contacts should be considered to be for a commercial purpose. The statute states:

"Commercial telephone solicitation" means any unsolicited call to a residential subscriber when the person initiating the call has not had a prior business or personal relationship with the subscriber, and when the purpose of the call is to solicit the purchase or the consideration of purchase of goods or services by the subscriber. Commercial telephone solicitation does not include calls initiated by organizations listed in Minnesota Statutes 2000, section 290.21, subdivision 3, clauses (a) to (e).

This definition is helpful in two respects. First, it limits commercial solicitation to those solicitations that attempt to solicit a purchase of goods or services. Second, it specifically exempts organizations listed in Minnesota Statutes 2000, section 290.21, subdivision 3, clauses (a) to (e), which are Minnesota's charitable, religious, and similar organizations.

As provided in the facts of this opinion, the associations that want to use Board data to contact individuals and associations are nonprofit organizations registered as either a social welfare advocacy organization or as an educational charity under Internal Revenue Service tax code. In this opinion, the Board will limit its guidance to the facts of the request; the associations that will use the data are organized on a nonprofit basis.

This does not mean that any use of Board data by a nonprofit association is permitted. Regardless of the status of the association, the use of Board data for a commercial purpose is prohibited. The requestor describes three reasons why the association may wish to use Board data and asks if any of the reasons are for a commercial purpose. The proposed uses of Board data are; (1) distribution of issue oriented communications, (2) to request contributions to support one or more goals of the association, and (3) to solicit individuals to join as a member of an association. Because the proposed uses of the data are distinct, the Board will evaluate each purpose separately.

### **Distribution of Issue Advocacy Communications**

Typically an association distributes issue advocacy communications to educate the recipients on the specifics of an issue and thereby influence the recipient's opinion on that issue. Educational material is not for a commercial purpose unless a desired outcome of the issue advocacy communication is the recipient purchasing specific goods or services. As long as the issue advocacy communication is not a vehicle to sell goods or services, Board data may be used to facilitate the communication.

### **Request Contributions to Support a Goal of the Association**

Issue advocacy communications commonly include a solicitation of a contribution to support the association's efforts on behalf of the issue. This type of solicitation is functionally no different than the requests for contributions that accompany the candidate, political party, and political committee communications that are specifically excluded from "commercial purpose" in Minnesota Statutes, section 10A.35.

A contribution made in response to a request to support the goal(s) of an association, candidate, political party, or political committee is an expression of support by the contributor. The contribution does not constitute the purchase of any discernible goods or service, therefore requesting a contribution in the circumstances described in this opinion is not for a commercial purpose.

The Board notes that requesting and collecting contributions for a purpose may, in certain circumstances, create a requirement for the association to register and report with the Board. For example, if the contributions are used for the purpose of influencing the actions of public officials, the association may become a principal under Minnesota's lobbying statutes with reporting obligations to the Board. If the purpose supported by the association is the defeat or passage of a constitutional amendment, the association may be governed by the political committee or fund registration and reporting requirements of Chapter 10A.

### **Solicitation of Membership in an Association**

The solicitation to become a member of an association serves as another opportunity for the recipient of the communication to make a contribution in support of the goals of the association. The only real distinction is that membership in an organization creates an ongoing relationship between the individual and the association where a onetime contribution may not.

Paying for membership in an issue-oriented association may in the broadest sense provide a “service” to the individual if the association provides members with a way to receive information and communicate with other individuals who share similar views, concerns, and goals. In the Board’s opinion this type of membership service does not constitute the sale of a service that would constitute a commercial transaction. Because the solicitation of membership by, and the payment of dues to, the issue-oriented associations described in the facts of the request does not in itself result in the commercial purchase of goods or services, the use of Board data in making the solicitation is not a prohibited commercial purpose.

In some cases membership in a nonprofit association may result in the commercial purchase of defined services. For example, in Minnesota, nonprofit health care providers deliver to “members” services in exchange for payment in what are clearly commercial transactions. For the purposes of this opinion, the associations who request the use of Board data to contact potential members are limited to advocacy organizations or educational charities, and will not be providing the type of defined service benefit to members that could be seen as having a commercial purpose.

Issued October 4, 2011

/s/ John Scanlon

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John Scanlon, Chair  
Campaign Finance and Public Disclosure Board