

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

THIS ADVISORY OPINION IS PUBLIC DATA
pursuant to a consent for release of information signed by the requester

RE: Disclosure related to ballot question committees

To: John Helmberger, Chairman
Minnesota for Marriage
2355 Fairview Ave N, Box 301
Roseville, MN 55113

ADVISORY OPINION 420

SUMMARY

Minnesota Statutes, Chapter 10A, provides for underlying source disclosure when a political committee accepts a contributions meeting certain statutory thresholds from an association not registered with the Campaign Finance and Public Disclosure Board. This opinion describes the statutory requirements under various scenarios presented by the requester.

FACTS

As the representative of Minnesota for Marriage ("MFM"), you ask for an advisory opinion based on the following facts:

1. Minnesota for Marriage is a broad coalition of leaders, both inter-faith and people outside the religious community, who support the Minnesota Marriage Amendment ("the Marriage Amendment") and asked the Legislature to place it on the ballot. These leaders have assembled a campaign to ensure this amendment passes.
2. MFM will engage in educational activities to promote and support the ballot issue. MFM has registered a political committee to receive contributions and make expenditures in support of the Marriage Amendment.
3. Although not stated explicitly in your request, the Board assumes the following fact for the purposes of this opinion: Minnesota For Marriage will not make contributions to candidates' principal campaign committees, will not make approved expenditures in coordination with candidates, will not make contributions to party units, and will not make contributions to political committees or funds other than those that limit their activity to making independent expenditures, ballot question expenditures, and those expenditures specified in Minnesota Statutes section 10A.121.

4. Although not stated explicitly in your request, the Board assumes the following fact for the purposes of this opinion: The donors described in the questions you pose are not registered political committees and do not have political fund accounts registered with the Board.

Based on the above statement of facts, you ask several questions about the disclosure required by Chapter 10A of Minnesota statutes as it applies to Minnesota For Marriage. The questions are listed as Issues in the opinion below.

Issue One

If MFM receives a contribution in excess of \$100 from a for-profit corporation, is MFM required to obtain and report additional information regarding the underlying source(s) of the funds contributed to MFM? If so, what is MFM required to obtain and report?

Opinion

The Board has recognized that a political committee that exists to promote or defeat a ballot question is included in the definition of an independent expenditure political committee created by the legislature in 2010. An independent expenditure political committee is a political committee that makes only independent expenditures and other expenditures specified in §10A.121. Section 10A.121 permits an independent expenditure political committee to make any expenditure other than (1) contributions to candidates or party units or (2) contributions to political committees or funds that themselves make contributions to candidates or party units. Thus an independent expenditure political committee may exist solely to promote or defeat a ballot question.

Minnesota Statutes Section 10A.27, subd. 14, provides that an association that uses revenue from the operation of a business to make contributions to an independent expenditure political committee may do so without providing any underlying source disclosure to the recipients of those contributions. For the purposes of this opinion, the Board assumes that the contribution from the for-profit corporation referenced in your question is money that constitutes revenue from the operation of a business. Thus, the corporate donor may make unlimited contributions to MFM without any underlying source disclosure.

The Board recommends that MFM secure from the for-profit corporate donor a statement that the contribution is made from revenue from the operation of a business, in order to ensure that the contribution falls under §10A.17, subd. 14. However, this recommendation is not a statutory requirement and any documentation obtained by MFM in this regard is part of its own records and is not filed with the Board.

Issue Two

If MFM receives a contribution in excess of \$100 but less than \$1,000 from a nonprofit, tax exempt organization established under Section 501(c)(4) of the Internal Revenue Code, is MFM required to obtain and report additional information regarding the underlying source(s) of the funds contributed to MFM? If so, what is MFM required to obtain and report?

Opinion

Under the assumed facts, the nonprofit corporate donor is an association not registered with the Board (an "unregistered association").

Minnesota Statutes section §10A.27, subd. 15, provides that an unregistered association that does not contribute \$5,000 or more to political committees or funds that exist to support a particular ballot question is not required to provide any disclosure of the sources of money it uses to make the contributions. If MFM receives a contribution from a nonprofit corporation, it will be required to ask the donor whether the donor has made contributions aggregating \$5,000 or more in a calendar year to political committees or funds that are established to promote or defeat the particular ballot question. If the nonprofit corporation has not made \$5,000 or more in such contributions, no disclosure of the nonprofit corporation's sources of money used to make the contribution is required.

If the nonprofit corporation has made aggregate contributions of \$5,000 or more in the calendar year to political committees or funds to promote or defeat a ballot question, it is required to provide to MFM with disclosure related to the sources of money it used to make the contribution to MFM. The disclosure statement must include itemized underlying sources, if any, and a total representing the amount attributable to sources for which itemization is not required.

To determine if any underlying source(s) of funding for the nonprofit corporation's contribution to MFM must be itemized, the donor may:

(1) Determine on a pro-rated basis, compared to the total membership dues, fees, and/or donations received by the association during the calendar year, each donor's share of the association's contribution to MFC. "Donor" in the context of this requirement means an individual or association that has paid dues or membership fees or made donations to the nonprofit corporation.

If no donor's pro-rated share is \$1,000 or more, then no itemization of underlying sources is required.

If the pro-ration method is used and if there are donors to the nonprofit corporation whose pro-rated share of the contribution to MFM is \$1,000 or more, the nonprofit corporation must itemize those donors as underlying source(s) of funding for its contribution to MFM.

(2) In the alternative, the nonprofit corporation may instead choose to allocate its contribution to MFM to specific donors to the nonprofit corporation. If it uses this method, it may select from its donors and allocate to its contribution to MFM all or part of each selected donor's dues, fees, and/or donations paid to the nonprofit corporation.

If a donor's dues, fees, and/or donations paid to the nonprofit corporation during the calendar year and allocated to the contribution to MFM total \$1,000 or more, the individual must be itemized as an underlying source.

Under either method of identifying underlying sources, it is possible that all or most of the nonprofit corporation's contribution to MFM will result from sources that are not required to be itemized. If that is the case, the donor corporation must indicate the amount of the contribution to MFM that is attributed to non-itemized underlying sources.

The Board provides a form which may be used by the donor corporation to provide MFM with the required underlying source disclosure statement.

The underlying source disclosure must be provided to MFM prior to the due date for the next report on which MFM will disclose the nonprofit corporate donor's contribution. MFM must provide the Board with the statement when it files the report including that contribution.

Issue Three

If MFM receives a contribution of \$1,000 or more from a nonprofit, tax exempt organization established under Section 501(c)(4) of the Internal Revenue Code, is MFM required to obtain and report additional information regarding the underlying source(s) of the funds contributed to MFM? If so, what is MFM required to obtain and report?

Opinion

As explained in the discussion of Issue Two, underlying source disclosure is not triggered by the amount donated to MFM, but by the total amount donated by the subject donor to all political committees or funds that are registered to promote or defeat the same ballot question. Thus, the response to Issue Two addresses this question as well.

Issue Four

If MFM receives a contribution in excess of \$100 but less than \$1,000 from a church or church organization established under Section 501(c)(3) of the Internal Revenue Code or, alternatively, an unincorporated association, is MFM required to obtain and report any additional information regarding the underlying source(s) of the funds contributed to MFM? If so, what is MFM required to obtain and report? Does it make a difference if the church is not incorporated?

Opinion

Unregistered association status applies to any association not registered with the Board without regard to its nonprofit status or lack thereof under the federal Internal Revenue Code. Thus, a nonprofit corporation operating under Internal Revenue Code section 501(c)(3) or an unincorporated association are both unregistered associations under Chapter 10A. As a result, these unregistered associations are subject to the same requirements as other unregistered associations. The response to Issue Two above also applies to the associations specified in the question posed in Issue Four.

Issue Five

If MFM receives a contribution of \$1,000 or more from a church or church organization established under Section 501(c)(3) of the Internal Revenue Code or, alternatively, an unincorporated association, is MFM required to obtain and report any additional information regarding the underlying source(s) of the funds contributed to MFM? If so, what is MFM required to obtain and report?

Opinion

For the reasons stated in response to Issues Three and Four above, the response to Issue Two also applies to those unregistered associations that are the subject of the question posed in Issue Five.

Issue Six

What legal liability does MFM have, under the Board's various Statements of Guidance issued at its various meetings in 2011, to obtain and report donors to donors, underlying sources of contributions, allocation(s) of contributions by donors, and other similar information referenced in the Board's Statements of Guidance?

Opinion

The Board's Statements of Guidance are not law; but they explain how the Board will apply Chapter 10A. Thus, MFM has no legal liability under the Statements of Guidance. Any legal obligation arises under the applicable provisions of Chapter 10A.

The reporting structure for independent expenditure political committees or funds, which is available to independent expenditure political committees or funds, provides penalties for failure to comply with the underlying source disclosure requirements of §10A.27, subd. 15 and 16. Under §10A.27, subd. 17, the a penalty of up to \$25,000 may be imposed on both the donor and the recipient for an unintentional violation of the requirements to provide underlying source disclosure. If the failure to provide the required underlying source disclosure is intentional, there is no maximum penalty for failure to comply.

Comment

In the Background section of your request, you make the following statement:

Prior to 2011 and the recent Guidance(s) issued by the Board, MFM could receive contributions to its political fund from corporations and would report the corporate name and address and the amount of the corporate contribution if in excess of \$100.

Your assessment of the requirements of Chapter 10A prior to the Board's recent guidance states only part of a political committee's reporting requirement. Prior to new legislation enacted in 2010, Minnesota Statutes Section 10A.27, subd. 13, specified the disclosure that a political committee must obtain from the donor when accepting money from an association not registered with the Board. In addition to reporting the donor information as you indicate in your statement, a political committee was required to provide the §10A.27, subd. 13, disclosure with the report disclosing the unregistered association contribution.

Under the 2010 legislation ballot question political committees or funds may provide underlying source disclosure under the new provisions of §10A.27, subd. 15, in lieu of under 10A.27, subd. 13.

Issued December 8, 2011

/s/ John Scanlon

John Scanlon, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes

10A.01 DEFINITIONS

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Subd. 18a. **Independent expenditure political committee.** “Independent expenditure political committee” means a political committee that makes only independent expenditures and disbursements permitted under section 10A.121, subdivision 1.

10A.121 INDEPENDENT EXPENDITURE POLITICAL COMMITTEES AND INDEPENDENT EXPENDITURE POLITICAL FUNDS

Subdivision 1. **Permitted disbursement.** An independent expenditure political committee or an independent expenditure political fund, in addition to making independent expenditures, may:

- (1) pay costs associated with its fund-raising and general operations;
- (2) pay for communications that do not constitute contributions or approved expenditures; and
- (3) make contributions to other independent expenditure political committees or independent expenditure political funds.

10A.27 CONTRIBUTIONS

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Subd. 13. **Unregistered association limit; statement; penalty.** (a) The treasurer of a political committee, political fund, principal campaign committee, or party unit must not accept a contribution of more than \$100 from an association not registered under this chapter unless the contribution is accompanied by a written statement that meets the disclosure and reporting period requirements imposed by section 10A.20. This statement must be certified as true and correct by an officer of the contributing association. The committee, fund, or party unit that accepts the contribution must include a copy of the statement with the report that discloses the contribution to the board. This subdivision does not apply when a national political party contributes money to its affiliate in this state.

(b) An unregistered association may provide the written statement required by this subdivision to no more than three committees, funds, or party units in a calendar year. Each statement must cover at least the 30 days immediately preceding and including the date on which the contribution was made. An unregistered association or an officer of it is subject to a civil penalty imposed by the board of up to \$1,000, if the association or its officer:

- (1) fails to provide a written statement as required by this subdivision; or
- (2) fails to register after giving the written statement required by this subdivision to more than three committees, funds, or party units in a calendar year.

(c) The treasurer of a political committee, political fund, principal campaign committee, or party unit who accepts a contribution in excess of \$100 from an unregistered association without the required written disclosure statement is subject to a civil penalty up to four times the amount in excess of \$100.

Subd. 14. **Contributions of business revenue.** An association may, if not prohibited by other law, contribute revenue from the operation of a business to an independent expenditure political committee or an independent expenditure political fund without complying with subdivision 13.

Subd. 15. **Contributions of dues or contribution revenue.** (a) An association may, if not prohibited by other law, contribute revenue from membership dues or fees, or from contributions received by the association to an independent expenditure political committee or an independent expenditure political fund without complying with subdivision 13. Before the day when the recipient committee or fund's next report must be filed with the board under section 10A.20, subdivision 2 or 5, an association that has contributed \$5,000 or more in aggregate to independent expenditure political committees or funds during the calendar year must provide in writing to the recipient's treasurer a statement that includes the name, address, and amount attributable to each individual or association that paid the association dues or fees, or made contributions to the association that, in total, aggregate \$1,000 or more of the contribution from the association to the independent expenditure political committee or fund. The statement must also include the total amount of the contribution from individuals or associations not subject to itemization under this section. The statement must be certified as true and correct by an officer of the donor association.

(b) To determine the membership dues or fees, or contributions made by an individual or association that exceed \$1,000 of the contribution made by the donor association to the independent expenditure political committee or fund, the donor association must:

- (1) apply a pro rata calculation to all unrestricted dues, fees, and contributions received by the donor association in the calendar year; or
- (2) as provided in paragraph (c), identify the specific individuals or associations whose dues, fees, or contributions are included in the contribution to the independent expenditure political committee or fund.

(c) Dues, fees, or contributions from an individual or association must be identified in a contribution to an independent expenditure political committee or fund under paragraph (b), clause (2), if:

- (1) the individual or association has specifically authorized the donor association to use the individual's or association's dues, fees, or contributions for this purpose; or
- (2) if the individual's or association's dues, fees, or contributions to the donor association are unrestricted and the donor association designates them as the source of the subject contribution to the independent expenditure political committee or fund. After a portion of an individual's or association's dues, fees, or contributions to the donor association have been designated as the source of a contribution to an independent expenditure political committee or fund, that portion of the individual's or association's dues, fees, or contributions to the donor association may not be designated as the source of any other contribution to an independent expenditure political committee or fund.

(d) For the purposes of this section, "donor association" means the association contributing to an independent expenditure political committee or fund that is required to provide a statement under paragraph (a).

Subd. 16. **Treasurer to submit disclosure statements.** The treasurer of a political committee or political fund receiving a statement required under subdivision 15, must file a copy of the statement before the deadline for the committee or fund's next report filed with the board under section 10A.20, subdivision 2 or 5, after receiving the statement.

Subd. 17. **Penalty.** (a) An association that makes a contribution under subdivision 15, and fails to provide the required statement within the time specified is subject to a civil penalty of up to four times the amount of the contribution, but not to exceed \$25,000, except when the violation was intentional.

(b) An independent expenditure political committee or an independent expenditure political fund that files a report without including the statement required under subdivision 15, is subject to a civil penalty of up to four times the amount of the contribution for which disclosure was not filed, but not to exceed \$25,000, except when the violation was intentional.

(c) No other penalty provided in law may be imposed for conduct that is subject to a civil penalty under this section.