

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

**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: Disclosure related to ballot question committees

ADVISORY OPINION 422

SUMMARY

Minnesota Statutes Chapter 10A requires certain disclosure when an association accepts contributions or uses its money for expenditures to promote or defeat a ballot question. This opinion describes the statutory requirements under various scenarios presented by the requester.

FACTS

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

1. The Association will engage in educational activities to promote and support the Minnesota ballot question related to the definition of marriage, which is on the ballot in November, 2012 ("the Minnesota ballot question").
2. The Association may create a ballot question political fund to receive contributions and make expenditures in support of the Minnesota ballot question.
3. The Association expects to receive contributions from other associations, including religious organizations such as churches, synagogues, mosques, or similar associations. These associations may be incorporated or unincorporated. They are collectively referred to in this opinion as "religious organizations."

The Association presents a number of questions to clarify how it should inform the leaders of potential organization donors regarding their activities, solicitations, and expenditures in support of the Minnesota ballot question. In addition, the Association wants to understand its obligations regarding the reporting and disclosure of underlying sources of money used to promote the Minnesota ballot question.

Questions 1 and 2

(1) If the Association's ballot question political fund receives a contribution in excess of \$100 but less than \$1,000 from a religious organization, established under Section 501(c)(3) of the Internal Revenue Code or, alternatively, an unincorporated association, is the Association required to obtain and report any additional information regarding the underlying sources of funds contributed to the Association? If so, what is the Association required to obtain and report.

(2) If the Association's ballot question political fund receives a contribution in excess of \$1,000 from a religious organization, established under Section 501(c)(3) of the Internal Revenue Code or, alternatively, an unincorporated association, is the Association required to obtain and report any additional information regarding the underlying sources of funds contributed to the Association? If so, what is the Association required to obtain and report.

Opinion

Based on the wording of the question, the Board assumes that transactions under consideration result from donations of money from religious organizations to the Association specifically for the purpose of promoting the passage of the Minnesota ballot question. As such, these transfers are "contributions" under Minnesota Statutes Chapter 10A and are part of the accumulation of money that constitutes the Association's political fund.

The Internal Revenue Code classification and the presence or absence of a corporate structure do not control disclosure requirements under Chapter 10A. Religious organizations, whether incorporated or not, as well as other associations not registered with the Board are all "unregistered associations" and are subject to the same disclosure requirements, including the requirement to disclose underlying sources of money given to other associations to promote or defeat a ballot question.

When a unregistered association makes a contribution to an association that has a political fund, that contribution is reported on the political fund report as coming from the donor association. In addition, Chapter 10A requires certain additional disclosure from the unregistered association donor.

Prior to 2010, the only provision that permitted an association with a political fund to accept money from a unregistered association was 10A.27, subd. 13. (Section 10A.12, subd. 5, covers the same subject, but is applicable only when an association uses its own general treasury money for political fund purposes.) Section 10A.27, subd. 13, requires that an unregistered association donor that contributes more than \$100 to an association for political fund purposes, must provide specified disclosure with the contribution.

In 2010, the legislature enacted statutes applicable to associations that make only independent expenditures. In its statements of guidance, the Board has recognized that these new provisions are written broadly enough to permit their use by associations that make only ballot question expenditures. The Board's recognition that this additional group of associations may elect to provide underlying source disclosure under §10A.27, subd. 15, instead of under §10A.27, subd. 13, provides a second option which the Board will accept as meeting the statutory underlying source disclosure requirements. An association proceeding under §10A.27, subd. 15, is not also required to disclose under §10A.27, subd. 13.

If the Association elects to provide underlying source disclosure under §10A.27, subd. 15, it will need to ask each religious organization or other unregistered association donor to its political fund account if it has, during the current calendar year, made contributions of \$5,000 or more to all associations engaged in activities to promote the Minnesota ballot question. If the answer to this question is "no", then no underlying source disclosure is required from the contributing religious organization or other unregistered association.

If the religious organization or other unregistered association contributor has made \$5,000 or more in contributions to promote the Minnesota ballot question, it must provide to the Association a statement of underlying sources as specified in Minnesota Statutes section 10A.27, subd. 15. the Association must include this statement with the report on which it discloses the contribution received from the unregistered association.

Question 3

In the scenarios identified in questions 1 and 2, above, what is the donor association required to report to the Campaign Finance Board? What if the donor association's contribution to a ballot question political fund exceeds \$5,000?

Opinion

As explained in response to Question 1, if the donor association's contributions to all ballot question political committees or funds related to the Minnesota ballot question is \$5,000 or more, it must provide a statement of underlying sources to the Association, which will file the statement with its Report of Receipts and Expenditures. Under this scenario, the statement of underlying source disclosure is provided to the Board by the Association. The donor religious organization itself is not required to report anything to the Board.

Question 4

If a religious organization leader speaks at a meeting or service to the members of the organization about the importance of marriage and supporting the Minnesota ballot question, takes an offering at that meeting or service, and then forwards the receipts to the Association for the support of the Minnesota ballot question, what underlying donor disclosure is required from the religious organization and what is the threshold for triggering the disclosure?

Opinion

The answer to this question depends on whether or not the leader of the religious organization informs the members of the religious organization that the proceeds of the collection will be given to the Association to be used to promote the Minnesota ballot question.

The Board first examines the scenario where the religious leader specifically informs religious organization members that the proceeds of the collection will be given to the Association and used to promote the Minnesota ballot question.

Under this scenario, the religious leader's informing members that the collection will be transferred to the Association to be used to promote the Minnesota ballot question results in a solicitation specifically for money to promote the Minnesota ballot question. As a result, the donations made in response to the solicitation are "contributions" as that word is defined in Chapter 10A, which regulates disclosure of money used to promote or defeat a ballot question.

In this scenario, the religious leader would be acting as a fundraiser on behalf of the Association. The contributions from the religious organization's members would be considered to be contributions to the Association and would become part of the Association's political fund.

Because donations received under this scenario constitute "contributions", other requirements of Chapter 10A also apply. Specifically, under §10A.15, subd 2, an association may not accept a contribution from an individual of more than \$20 unless the name and address of the donor is collected and recorded. If the amount of the contribution is more than \$100, the association must also collect, record, and report employment information for the donor under §10A.20, subd. 3(b). Individual contributions of \$20 or less may be accepted without obtaining any information from the donor.

Under the scenario you have proposed, the religious leader should inform religious organization members that if they wish to donate more than \$20, they should do so by means of a check made payable to the Association with their name and address on it or they should provide their name and address by some other means. The religious leader should also inform religious organization members that if they wish to donate more than \$100, the Association will not be able to accept the amount over \$100 unless they also provide employment information. It will be up to the religious leader and the Association to determine the method of obtaining this additional required information.

the Association will report the contributions on its political fund report, itemizing contributions from any donor of more than \$100. The Association will need to aggregate contributions from the same donor in order to determine if itemization is required.

The Board next examines the situation where the funds forwarded to the Association are from the religious organization's general offering taken at a meeting or service. In this case, the religious leader has not informed the religious organization members that the offering will be used for any specific purpose or that it is any different than offerings taken up at other meetings or services.

Under this scenario, the donations from individual religious organization members are not "contributions" to the Association, but are donations to the religious organization. If the religious leader transfers all or part of the collection to the Association, the transfer constitutes a contribution by the religious organization to the Association, which will be accounted for by the Association through its political fund account.

Because the religious organization is not itself an entity registered with the Board, it may be required to provide disclosure of the underlying sources of the money it contributes to the Association. If the total amount that the religious organization contributes to the Association and other associations to promote the Minnesota ballot question in a calendar year is less than \$5,000, no disclosure of underlying sources is required. If \$5,000 or more is contributed, underlying source disclosure as specified in Minnesota Statutes section 10A.27, subd. 15, is required.

Question 5

If a religious leader includes an article in it's a membership bulletin or newsletter about the importance of supporting the Minnesota ballot question and the cost of producing the communication exceeds \$100, is there a reporting or disclosure obligation triggered by the

expenditure by the religious organization? If so, what is the reporting obligation?

Opinion

The facts on which this response is based relate to an article that either expressly advocates for the adoption of the ballot question or is subject to no reasonable interpretation other than as advocacy for adoption of the question. Thus, publishing the article is a communication to promote the Minnesota ballot question. The costs of communications to promote or defeat a ballot question are ballot question expenditures under Chapter 10A.

Although Chapter 10A states that an association that makes more than \$100 in expenditures to promote or defeat a ballot question must do so through a political fund, the Board has determined that it will take no action and impose no penalty for an association that fails to register as long as that association registers once it has raised or spent more than \$5,000 to promote or defeat a ballot question.

If the total cost of communications by the religious organization during a calendar year to promote the Minnesota ballot question exceeds \$5,000, the religious organization will be required to register a political fund account with the Board and to track and disclose its ballot question expenditures using its political fund accounting mechanism.

An association reporting through a political fund account must file periodic disclosure reports as specified in Minnesota Statutes section 10A.20.

Question 6

If an anonymous donor contributes funds to a religious organization, directing the funds to be spent in support of the Minnesota ballot question, may the religious organization forward the funds to the Association for use through its political fund? What is the reporting requirement attendant to such a contribution? May the contribution be received by the Association for its political fund for support of the marriage amendment if it is more than \$100?

Opinion

The religious organization may accept and forward to the Association an anonymous donation to support the Minnesota ballot question if the donation does not exceed \$20. Anonymous contributions of more than \$20 to promote or defeat a ballot question are prohibited by Minnesota Statutes section 10A.15, subd. 1.

Because anonymous donations may not exceed \$20 in amount, they are reported in the total amount of unitemized contributions on the recipient's schedule of contributions received.

Question 7

If a religious leader plans a series of discussions or other religious organization educational events discussing the importance of marriage as the union of one man and woman to the spouses, children, and society from both a religious and secular perspective between now and the November, 2012, general election, but does not specifically urge religious organization members to vote for the Minnesota ballot question, is there any potential that any expenses incurred by the religious organization are subject to reporting as expenditures in support of the Minnesota ballot question?

Opinion

Minnesota Statutes section 10A.01, subd. 9, defines "expenditure" as, among other things, money spent "for the purpose of promoting or defeating a ballot question."

The Board has issued guidance on how associations may decide whether expenditures they make should be treated as "expenditures" or not.

The guidance provides:

An expenditure to promote or defeat a ballot question (a ballot question expenditure) is an expenditure:

(a) that expressly advocates the adoption or defeat of a ballot question measure, or

(b) that is susceptible of no reasonable interpretation other than as an appeal to vote for or against a ballot question measure.

Under the facts presented in the question, it is clear that clause (a) above is not applicable. On December 6, 2011, the Board provided further guidance on the application of clause (b). In that guidance, the Board stated:

(i) A communication is presumed to be a communication to promote or defeat a ballot question if it (1) mentions the issue that is the subject of the ballot question; (2) states a position on that issue; and (3) mentions the ballot question that addresses the issue, mentions voting on the issue, or otherwise indicates that people will be able to vote on the issue.

(ii) A communication that discusses an issue that is the subject of a ballot question but does not mention the ballot question that addresses the issue; does not mention voting on the issue; and otherwise does not indicate that people will be able to vote on the issue is presumed to be excluded from the definition of ballot question expenditure under Chapter 10A.

If the scenario presented in this question meets the requirements of clause (b)(ii) above, the religious organization will have the benefit of the presumption that the associated costs are not ballot question expenditures. The religious organization should recognize that this presumption is not absolute. It is possible that the presumption could be rebutted by other facts surrounding the activities of the religious organization.

Question 8

If the religious leader in question 7 does call for the members of the religious organization to vote for the Minnesota ballot question, does the express advocacy trigger reporting or disclosure obligations by the religious organization?

Opinion

This question presents a scenario that falls within clause (a) of the guidance quoted in the

Relevant Statutes

10A.01 DEFINITIONS.

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Subd. 9. **Campaign expenditure.** "Campaign expenditure" or "expenditure" means a purchase or payment of money or anything of value, or an advance of credit, made or incurred for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or defeating a ballot question.

...

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.

...

10A.13 ACCOUNTS THAT MUST BE KEPT.

Subdivision 1. **Accounts; penalty.** The treasurer of a political committee, political fund, principal campaign committee, or party unit must keep an account of:

(1) the sum of all contributions, except any donation in-kind valued at \$20 or less, made to the committee, fund, or party unit;

(2) the name and address of each source of a contribution made to the committee, fund, or party unit in excess of \$20, together with the date and amount of each;

...

10A.20 CAMPAIGN REPORTS.

Subdivision 1. **First filing; duration.** The treasurer of a political committee, political fund, principal campaign committee, or party unit must begin to file the reports required by this section in the first year it receives contributions or makes expenditures in excess of \$100 and must continue to file until the committee, fund, or party unit is terminated. The reports must be filed electronically in a standards-based open format specified by the board. For good cause shown, the board must grant exemptions to the requirement that reports be filed electronically.

...

Subd. 3. **Contents of report.** (a) The report must disclose the amount of liquid assets on hand at the beginning of the reporting period.

(b) The report must disclose the name, address, and employer, or occupation if self-employed, of each individual or association that has made one or more contributions to the reporting entity,

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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.