

**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: Creation and operation of a conduit fund by a union**

**ADVISORY OPINION 425**

**SUMMARY**

A “conduit fund” organized and administered by a union, but otherwise in accordance with the express and implied provisions of Minnesota Statutes section 211B.15, subdivision 16, is not a political committee or political fund under Minnesota Statutes Chapter 10A, and is not required to register with the Board. A union may contract with an individual for the administration of its sponsored conduit fund.

**FACTS**

As the representative of the a Minnesota local trade union (the Union), you ask the Campaign Finance and Public Disclosure Board for an advisory opinion based on the following facts:

1. The Union is organized as the local branch of an international union.
2. The Union is aware of the right of corporations to establish conduit funds as recognized under Minnesota Statutes section 211B.15, subdivision 16.
3. The Union wishes to form a fund that would comply with all of the express and implied provisions of Minnesota Statutes section 211B.15, subdivision 16.
4. It is the desire of the Union that the fund it establishes as a result of this request not be a political committee or political fund that would be required to register and report under Minnesota Statutes Chapter 10A.
5. The Union may wish to contract with an outside individual to perform the administrative functions associated with the conduit fund including soliciting the Union's members, receiving and recording member deposits, and making transfers to candidates at the direction of the contributing members.

## Issue One

Is a fund established by a union rather than by a corporation, but otherwise operating under the terms of Minnesota Statutes section 211B.15, subdivision 16, and the Board's Advisory Opinions 6 and 406 a political committee or a political fund that is required to register and report under Minnesota Statutes Chapter 10A?

## Opinion

The question of corporation-sponsored employee contribution programs was first addressed by the Board in Advisory Opinion 6 in 1974. At that time, Minn. Stat. § 211B.15, subd. 16, had not been enacted, but the concept of a conduit fund existed in federal law. In Advisory Opinion 6, the Board concluded that a corporation may establish a nonpartisan conduit plan to solicit voluntary contributions from employees if the individual employee making the contribution retains sole control over the disposition of the employee's accumulated funds.

The Board's opinion did not establish the authority of corporations to create employee conduit funds. Rather, the central conclusion of the opinion was that under the proposed terms of operation, these newly recognized conduit funds would not constitute political committees or political funds that would be required to register and report under Chapter 10A. Years after the adoption of Advisory Opinion 6, the legislature enacted the concept of the corporate conduit fund into law as Minn. Stat. § 211B.15, subd. 16.

The Board more recently addressed the same question, again at the request of a corporation, in Advisory Opinion 406. There, the Board reaffirmed that a properly formed and managed employee contribution fund would not constitute a political committee or fund under Chapter 10A and, thus, would not be required to register with or report to the Board.

Because the 1974 advisory opinion was requested by a corporation, the resulting opinion was limited to corporate conduit funds. Similarly, because the subsequent legislation codified the earlier advisory opinion, it was also limited in scope to corporate conduit funds. The present request asks the Board to revisit the 1974 question from the perspective of a local labor union.

The request asks, in essence, whether there is some set of policies and procedures by which the union could establish a member contribution fund similar to the conduit funds recognized in Advisory Opinion 6 and 406 and in Minn. Stat. § 211B.15, subd. 16, so that the member contribution fund would not constitute a political committee or political fund under Chapter 10A.

The previous advisory opinions as well as the corporate conduit fund statute all identify the most important characteristics required for a contribution fund to be excluded from the definitions of political committee and political fund. These characteristics are (1) the fund is nonpartisan; (2) any contribution into the fund comes from an individual who is solely responsible for the decision to contribute to the fund; (3) any contribution from the fund to a candidate must be at the sole direction of the individual whose money will be used to make the candidate contribution; and (4) the individual contributor to the fund remains the owner of the money the individual placed in the fund.

The Board's previous opinions that a corporate conduit fund is not covered by the registration and reporting requirements of Chapter 10A were based on the criteria under which the fund would operate. A political committee is a group of two or more people operating in concert. A conduit fund consists of individuals acting individually, each making their own decisions about their political contribution activities. Thus, a conduit fund is not a political committee. A political

fund is an accumulation of an association's money that is used for specified political purposes. A conduit fund consists of money that belongs to the individual participants. The association sponsoring the conduit fund has no ownership or control over each individual's deposits into the conduit fund. Thus, a conduit fund is not a political fund.

Considering the factors that exclude a conduit fund from the definitions of political committee and political fund, the Board finds no legal basis on which to distinguish for Chapter 10A purposes a corporate conduit fund from a similar fund established by a local union for its members. Thus, the Board concludes that a fund operated by a local union and meeting the requirements of a nonpartisan conduit fund, as further described below, is not a political committee or a political fund and is not required to register or report under Chapter 10A.

Based on the concepts established in Advisory Opinions 6 and 406 and recognized in Minn. Stat. § 211B.15, subd. 16, a union member contribution conduit fund may operate without becoming a Chapter 10A political committee or political fund if it complies with the following requirements.

1. All solicitations for contributions to the fund that are directed to union members by the local union must be in writing, must be informational and nonpartisan in nature, and must not be promotional for any particular candidate or group of candidates.
2. The solicitation must consist only of a general request to participate in the fund and must state that there is no minimum contribution and that a contribution or lack thereof will in no way impact the participant's union membership or status.
3. The solicitation must also state that the union member must direct the contribution to candidates of the member's choice, and that any response by the member shall remain confidential and shall not be directed to the member's supervisors or managers or to union leaders. This means that the individual who administers the fund may not be a local, state, or national leader of the union or a union steward.
4. The fund is established and operated by a single local union and only members of that local union are permitted to participate in the fund.
5. The fund must maintain members' contributions in a depository separate from any other depository.
6. Contributing members must direct the distribution to candidates of their contributions to the fund. The local union sponsor may not be involved directly or indirectly in the determination of the recipients of a member's contributions to the fund.
7. When contributions to candidates are made through the fund, the amount of each individual contribution as well as the name and address of the contributor must be provided to the recipient of the contribution.
8. Implicit in the concept of a conduit fund is the member's retention of control over the member's contributions to the fund. In order to fully implement this requirement, a member must be able to withdraw all of the member's contributions to the fund that have not previously been designated by the member for a specific candidate and have not been actually paid to that candidate. Any solicitation of transfers to the fund must include a statement of this right.

## Issue Two

May a local union that has a conduit fund organized and administered under the terms of this opinion retain and pay with union funds an individual to handle some or all of the administrative aspects of the fund, including solicitation of the union's members, receiving and recording member deposits, receiving direction from members with regard to making contributions to candidates with the member's funds, and making the transfers to candidates at the direction of the contributing members?

## Opinion

If a local union conduit fund meets the requirements set forth in this Opinion under Issue One, the fund's status with respect to Chapter 10A is not altered by the union's decision to pay an individual to administer the fund rather than undertaking that administration with union employees or volunteers. Even if administration of the fund is contracted to another entity, the union retains the responsibility for operation of the fund consistent with this Opinion.

Issued May 1, 2012

/s/ Greg McCullough

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Greg McCullough, Chair  
Campaign Finance and Public Disclosure Board

## Statutory Citations

### 211B.15 CORPORATE POLITICAL CONTRIBUTIONS.

. . .

Subdivision 16. **Employee political fund solicitation.** Any solicitation of political contributions by an employee must be in writing, informational and nonpartisan in nature, and not promotional for any particular candidate or group of candidates. The solicitation must consist only of a general request on behalf of an independent political committee (conduit fund) and must state that there is no minimum contribution, that a contribution or lack thereof will in no way impact the employee's employment, that the employee must direct the contribution to candidates of the employee's choice, and that any response by the employee shall remain confidential and shall not be directed to the employee's supervisors or managers. Questions from an employee regarding a solicitation may be answered orally or in writing consistent with the above requirements. Nothing in this subdivision authorizes a corporate donation of an employee's time prohibited under subdivision 2.