

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

THIS ADVISORY OPINION IS PUBLIC DATA

**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: Expenditures for which an individual will be deemed a candidate

ADVISORY OPINION 438

SUMMARY

An individual is deemed a candidate under Chapter 10A when the individual self-funds activities (1) that cost more \$100 and (2) that are made for the purpose of bringing about the individual's nomination or election to office. Certain very limited activities may be undertaken by an individual exploring a candidacy without making the individual a candidate. A candidate who has not formed a principal campaign committee still must file campaign finance reports if the candidate self-funds campaign expenditures in excess of \$750.

FACTS

As the attorney for an individual who is exploring whether to seek nomination and election to a Minnesota constitutional office, you ask the Campaign Finance and Public Disclosure Board for an advisory opinion. Your request is based on the following assumed facts, which you have provided:

1. For question 1 below, assume that the individual is exploring whether to seek nomination and election for a constitutional office in 2014.
2. For question 1 below, assume that the individual has not decided whether to seek nomination and election for a constitutional office in 2014.
3. For question 1 below, assume the individual has not received contributions or made expenditures in excess of \$100 for the purpose of bringing about the individual's nomination or election.
4. For question 1 below, assume the individual has not given implicit or explicit consent for any other person to receive contributions or make expenditures in excess of \$100 for the purpose of bringing about the individual's nomination or election.
5. For question 1 below, assume the individual will spend only the individual's own money on the activities described in the question.

6. For question 2 below, assume that the individual has decided to seek nomination and election for a constitutional office in 2014.
7. For question 2 below, assume the individual will spend only the individual's own money on the campaign, or the individual will not accept contributions totaling more than \$750 from other people and will not want or seek public funding for the campaign.
8. For all questions, assume the individual has not formed or registered a principal campaign committee.
9. For all questions, assume the individual has not taken the action necessary under the law of this state to qualify for nomination or election.

Question One

Must an individual file a campaign finance report under Minnesota Statutes section 10A.20, subdivision 6, if the individual takes one or more of the following actions:

- 1) self-funds background research about himself or herself as part of the exploratory process;
- 2) self-funds name-recognition polling or issue polling as part of the exploratory process;
- 3) self-funds name-recognition polling or issue polling as part of the exploratory process and the polling questions reference the upcoming election for the constitutional office being considered by the individual; or
- 4) self-funds focus group research as a means of further refining issue polling as part of the exploratory process.

If the individual takes any one of these actions, does the individual need to form and register a principal campaign committee? Similarly, by making such self-funded expenditures as part of the exploratory process, would the individual be deemed a "candidate" under Minnesota Statutes section 10A.01, subdivision 10?

Opinion

Minnesota Statutes section 10A.01, subdivision 10, provides as follows:

"Candidate" means an individual who seeks nomination or election as a state constitutional officer, legislator, or judge. An individual is deemed to seek nomination or election if the individual has taken the action necessary under the law of this state to qualify for nomination or election, has received contributions or made expenditures in excess of \$100, or has given implicit or explicit consent for any other person to receive contributions or make expenditures in excess of \$100, for the purpose of bringing about the individual's nomination or election.

A candidate must form and register a principal campaign committee with the Board if the candidate accepts more than \$750 in contributions or accepts public subsidy. Minn. Stat. § 10A.105, subd. 1. A candidate who is not required to form a principal campaign committee still must report to the Board if the candidate "makes campaign expenditures in aggregate in excess

of \$750 in a year.” Minn. Stat. § 10A.20, subd. 6.

According to the provided facts, the individual has not yet decided whether to seek office and has not yet taken the action necessary to qualify for nomination or election to office. Nor has the individual received contributions in excess of \$100 or given consent for another person to receive contributions or make expenditures in excess of the \$100 threshold. Consequently, the individual can be deemed a candidate under Minnesota Statutes section 10A.01, subdivision 10, only if the individual’s own payments for one or more of the activities identified in the question exceed the \$100 threshold and are made “for the purpose of bringing about the individual’s nomination or election.”

The first activity listed is the self-funding of background research on the individual that is undertaken before the individual has decided to seek office. Running a background check on oneself when deciding whether to run for office is sufficiently remote from the process of seeking nomination or election to office that it will not transform an individual into a candidate by operation of Minnesota Statutes section 10A.01, subdivision 10.

The second activity listed is name-recognition polling that again is undertaken before the individual has decided to seek office. Polling, however, involves contact with potential voters. A poll theoretically could be structured both to measure the name recognition of the individual and to also create a positive impression of the individual in a way that could help bring about the individual’s nomination or election. Consequently, whether name-recognition polling is an activity that transforms an individual into a candidate by operation of Chapter 10A depends on the specific content of the poll.

If the questions in the poll simply ask voters whether they have heard of the individual or whether they have an impression of the individual, the potential influence on the voters would be minimal. When name-recognition polling can have only a minimal effect on voters, the Board will not consider the polling to be for the purpose of bringing about the individual’s nomination or election and this activity will not transform an individual into a candidate under Chapter 10A.

Conversely, if the poll questions refer to the individual in a way that could change the voter’s impression of the individual or the individual’s potential opponents, the poll could help to bring about the individual’s nomination or election to office. An individual who authorizes this type of polling would be deemed a candidate under Chapter 10A if the cost of the activity exceeds \$100.

The final activities listed in question one are issue polling and focus group research. These activities are conducted to determine which issues are most important to potential voters and which messages best resonate with voters on those issues. This information then is used to develop a more effective campaign to nominate or elect an individual. Because the information gathered from issue polling and focus group research is so directly related to bringing about an individual’s nomination or election, an individual who authorizes these activities would be deemed a candidate under Chapter 10A if their cost exceeds \$100.

Under the facts presented for question one, the individual will not accept any contributions or public subsidy. Thus, even if the individual is deemed a candidate under Chapter 10A due to one of the activities discussed above, the individual would not be required to form or register a principal campaign committee with the Board. See Minn. Stat. § 10A.105, subd. 1 (candidate

must form and register principal campaign committee when candidate receives more than \$750 in contributions or accepts public money).

Even without a campaign committee, however, a self-funded candidate still must disclose expenditures when those expenditures exceed \$750 in a calendar year. See Minn. Stat. § 10A.20, subd. 6 (candidate who does not register principal campaign committee must file reports when expenditures exceed \$750). An expenditure is “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.” Minn. Stat. § 10A.01, subd. 9.

An activity that is undertaken for the purpose of bringing about the individual’s nomination or election also would be an activity undertaken “for the purpose of influencing the nomination or election of a candidate.” *Id.* Thus, if the cost of any of the activities undertaken for the purpose of bringing about the individual’s nomination or election exceeds \$750, alone or in aggregate, the individual must file campaign finance reports with the Board. The schedule for filing these reports is in Minnesota Statutes section 10A.20, subdivisions 2 and 6.

Question Two

Must an individual file a campaign finance report under Minnesota Statutes section 10A.20 if the individual, having decided to seek nomination and election for a constitutional office, takes one or more of the following actions:

- 1) self-funds communication development such as issue statements or media training;
- 2) self-funds creative work such as the development of a campaign website, introductory video, and logo; or
- 3) self-funds the purchase of mailing lists.

Does the individual need to form and register a principal campaign committee? Similarly, by making such self-funded expenditures, would the individual be deemed a “candidate” under Minnesota Statutes section 10A.01, subdivision 10?

Opinion

As stated above, a candidate is someone “who seeks nomination or election” to a state-level office or who is deemed to seek nomination or election to an office because the individual meets the criteria listed in Minnesota Statutes section 10A.01, subdivision 10. Under the facts presented for question two, the individual already has decided to seek nomination and election to an office when the individual undertakes the listed actions. Because the individual is someone “who seeks nomination or election” to office, the individual is a candidate under the Chapter 10A definition.

Under the facts presented for question two, the individual will not accept any contributions or public subsidy. Thus, even if the individual is a candidate under Chapter 10A, the individual would not be required to form or register a principal campaign committee with the Board. See Minn. Stat. § 10A.105, subd. 1 (candidate must form and register principal campaign committee when candidate receives more than \$750 in contributions or accepts public money).

Even without a campaign committee, however, a self-funded candidate still must disclose

Relevant Statutes

Minn. Stat. § 10A.01 DEFINITIONS

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. 10. **Candidate.** "Candidate" means an individual who seeks nomination or election as a state constitutional officer, legislator, or judge. An individual is deemed to seek nomination or election if the individual has taken the action necessary under the law of this state to qualify for nomination or election, has received contributions or made expenditures in excess of \$100, or has given implicit or explicit consent for any other person to receive contributions or make expenditures in excess of \$100, for the purpose of bringing about the individual's nomination or election. A candidate remains a candidate until the candidate's principal campaign committee is dissolved as provided in section 10A.243.

Minn. Stat. § 10A.105 PRINCIPAL CAMPAIGN COMMITTEE.

Subdivision 1. **Single committee.** A candidate must not accept contributions from a source, other than self, in aggregate in excess of \$750 or accept a public subsidy unless the candidate designates and causes to be formed a single principal campaign committee for each office sought. A candidate may not authorize, designate, or cause to be formed any other political committee bearing the candidate's name or title or otherwise operating under the direct or indirect control of the candidate. However, a candidate may be involved in the direct or indirect control of a party unit.

Minn. Stat. § 10A.20 CAMPAIGN REPORTS

Subd. 6. **Report when no committee.** (a) A candidate who does not designate and cause to be formed a principal campaign committee and who makes campaign expenditures in aggregate in excess of \$750 in a year must file with the board a report containing the information required by subdivision 3. Reports required by this subdivision must be filed by the dates on which reports by principal campaign committees must be filed.