

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

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REQUESTER OF THE ADVISORY OPINION, WHICH IS NON PUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)**

ADVISORY OPINION 447

SUMMARY

A principal campaign committee must consider an unregistered association's sources of funding to determine whether it can accept a contribution from that unregistered association.

Facts

As a representative of a candidate's registered principal campaign committee, you ask the Campaign Finance and Public Disclosure Board for an advisory opinion on behalf of the principal campaign committee based on the following facts:

1. The principal campaign committee may receive contributions from unregistered associations. For the purpose of this advisory opinion unregistered associations include political committees registered with the Federal Elections Commission (FEC) and political committees registered in other states.
2. The requester is aware that there are different types of political committees registered with the FEC, and wishes to understand if contributions from certain types of FEC committees may be accepted by a principal campaign committee.
3. The requester is aware of applicable individual and aggregate special source limits on contributions from unregistered associations. The principal campaign committee is also aware of the additional disclosure requirements found in Minnesota Statutes section 10A.27, subdivision 13, for unregistered associations that contribute more than \$200 to a principal campaign committee. The principal campaign committee will insure that contributions from unregistered associations comply with contribution limit and reporting provisions of Chapter 10A.

Introduction

Most contributions received by principal campaign committees are from individuals or from political committees, political funds, or political party units registered with the Board. All registered committees, funds, and party units file periodic reports with the Board, and are required to comply with applicable limitations on sources of funding found in Minnesota campaign finance law.

In addition, Chapter 10A provides that a principal campaign committee may accept contributions from unregistered associations subject to the same contribution and aggregate special source

limits that apply to political committees and funds registered with the Board. Typically the unregistered associations that make contributions are in fact registered as a political committee or political fund, but in a state other than Minnesota, or with the FEC. To insure that unregistered associations are not making contributions from sources prohibited under Chapter 10A, and to insure that there is public disclosure regarding the unregistered associations participating in Minnesota state elections, an unregistered association that contributes more than \$200 to a principal campaign committee, political committee or fund, or party unit registered with the Board must provide a disclosure statement with the contribution.¹ In specific Minnesota Statutes, section 10A.27, subdivision 13, provides in part:

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 \$200 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.

An unregistered association that makes contributions of over \$200 to more than three political committees, political funds, principal campaign committees, or party units in a year is required to register with the Board.

For the purposes of this advisory opinion the Board must consider the organization and source of administrative support and contributions provided to various types of political committees registered with the FEC (FEC PACs). The Board's understanding of FEC PACs is drawn from FEC publications, and is summarized in the descriptions provided below.

Separate segregated fund (SSF) Under federal law, corporations and labor organizations may set up political committees which make contributions to and expenditures on behalf of federal candidates and other political committees. Federal election law refers to this type of corporate or labor political committee as a separate segregated fund. A corporation or union that sponsors an SSF is called the connected organization. The connected organization may exercise control over the expenditures and contributions made by the SSF. The funds raised by the SSF must come from individuals. Direct corporate contributions to the SSF are prohibited. Individuals who contribute to the SSF must be affiliated with the connected organization. For example, the SSF for a corporation with capital stock may solicit only the corporation's stockholders, executive and administrative personnel, and the families of both groups. A labor union and its SSF may solicit only union members and their families. The connected organization may pay for the operating costs of the SSF, including fundraising expenses. The administrative support provided by the connected association is exempted from the federal definition of contribution or expenditure, and therefore is not subject to disclosure by the SSF to the FEC. The official name of the SSF must include the full name of the connected association.

¹ The disclosure required with contributions from unregistered associations to ballot question committees and funds and to independent expenditure committees and funds is defined in Minnesota Statutes section 10A.27, subdivisions 14 and 15. The disclosure provided with contributions to these types of committees and funds is very different from the disclosure provided with a contribution to a principal campaign committee, and is outside of the scope of this advisory opinion.

Nonconnected political committee A nonconnected political committee does not have a connected organization. A nonconnected political committee must either pay for its operating costs and fundraising expenses from the contributions it raises, or it must report as an in-kind contribution any administrative cost or fundraising expenses paid for by another association. In-kind contributions are subject to federal limits, prohibitions, and disclosure requirements. A nonconnected political committee may receive limited administrative support from an organization that is not a corporation or a labor organization. For example, a partnership may provide limited support to a nonconnected committee. A nonconnected political committee may not accept direct corporate or labor donations.

Leadership committee Federal candidates may establish a leadership committee that is separate from the authorized committee of the candidate. Under federal law the leadership committee may make expenditures or contributions to other federal and state-level candidates consistent with federal and state limits and regulations. A leadership committee is directly or indirectly established, financed, maintained, and controlled by a candidate for federal office. A leadership committee is a type of nonconnected political committee, and may not accept direct corporate or labor donations.

The Board has previously addressed the question of whether an SSF may contribute to Minnesota committees in Advisory Opinions 371 and 375. Both opinions found it problematic for an SSF receiving corporate administrative support to make contributions in Minnesota. The Board's opinions were limited in scope because at the time the opinions were issued, Minnesota Statutes section 211B.15, which regulates corporate contributions to Minnesota committees, was outside of the Board's jurisdiction. The Board now has jurisdiction over section 211B.15 and therefore may provide an opinion on how that statute applies to contributions made to committees, funds, and party units registered with the Board.

Issue One

May a principal campaign committee accept a contribution from an unregistered association that is a federally-registered separate segregated fund receiving limited administrative support from a connected organization that is a for-profit corporation?

Opinion One

No. Under the provisions of Minnesota Statutes section 10A.01, subdivision 11, a contribution may include donations of money and in-kind donations of goods or services. Administrative support to run an SSF, including its fundraising efforts, are therefore in-kind donations under Chapter 10A, and are subject to the regulations on contributions.

Contributions from for-profit corporations are prohibited in Minnesota Statutes section 211B.15, subdivision 2, which states:

Subd. 2. **Prohibited contributions.** (a) A corporation may not make a contribution or offer or agree to make a contribution directly or indirectly, of any money, property, free service of its officers, employees, or members, or thing of monetary value to a political party, organization, committee, or individual to promote or defeat the candidacy of an individual for nomination, election, or appointment to a political office.

Because administrative support and fundraising efforts are in-kind contributions from the for-profit corporation to the SSF and because in-kind contributions, either direct or indirect, from a for-profit corporation are prohibited in Minnesota, a principal campaign committee may not accept a contribution from an SSF with a connected organization that is a for-profit corporation. The Board recognizes that under federal law administrative support and fundraising costs provided to an SSF from its connected organization are not considered contributions. However, the federal definition of contribution does not create a different standard for unregistered associations that choose to make contributions to committees registered with the Board. Instead, the Board must apply the Minnesota definition of contribution to these entities.

Issue Two

May a principal campaign committee accept a contribution from an unregistered association that is a federally-registered separate segregated fund receiving limited administrative support from a connected organization that is a limited liability company?

Opinion Two

No. Minnesota Statutes section 211B.15, subdivision 1, defines the types of entities included in the definition of corporation. This provision provides that “corporation” includes “a limited liability company formed under chapter 322B or 322C, or under similar laws of another state, that does business in this state.”

Therefore, for the reasons discussed under Opinion One, a principal campaign committee may not accept a contribution from an SSF with a connected organization that is a limited liability company.

Issue Three

May a principal campaign committee accept a contribution from an unregistered association that is a federally-registered separate segregated fund receiving limited administrative support from a connected organization that is a partnership?

Opinion Three

Yes. A partnership is not included in the definition of corporation found in Minnesota Statutes section 211B.15, subdivision 1. Therefore a partnership’s provision of administrative and fundraising support to an SSF does not fall within the prohibitions in section 211B.15. A principal campaign committee therefore may accept a contribution from an SSF with a connected organization that is a partnership.

If the contribution is more than \$200, the principal campaign committee must obtain the underlying disclosure required by Minnesota Statutes section 10A.27, subdivision 13, and provide a copy of that disclosure to the Board with the report that contains the contribution. The administrative and fundraising support from the partnership is an in-kind contribution to the SSF, and therefore must be accurately valued and reported as a contribution from the partnership to the SSF on the underlying disclosure statement provided to the principal campaign committee.

Issue Four

May a principal campaign committee accept a contribution from an unregistered association that is a federally-registered separate segregated fund receiving limited administrative support from a connected organization that is a labor organization?

Opinion Four

Labor organizations are not required to file articles of incorporation. An unincorporated labor organization therefore is not included in the prohibition on corporate contributions. A principal campaign committee therefore may accept a contribution from an SSF with a connected organization that is a labor organization, as defined in 11 C.F.R. § 114.1(d), provided the labor organization is not a “corporation” as defined by Minnesota Statutes section 211B.15, subdivision 1. As stated in Opinion Three, if the contribution is more than \$200, the principal campaign committee must obtain the underlying disclosure required by Minnesota Statutes section 10A.27, subdivision 13, and provide a copy of that disclosure to the Board with the report that contains the contribution. The administrative and fundraising support from the labor organization is an in-kind contribution to the SSF, and therefore must be accurately valued and reported as a contribution from the partnership to the SSF on the underlying disclosure statement.

Issue Five

May a principal campaign committee accept a contribution from an unregistered association that is a federally-registered separate segregated fund receiving limited administrative support from a connected organization that is a nonprofit corporation, if the nonprofit otherwise complies with Minnesota Statutes section, 211B.15, subdivisions 15 and 17?

Opinion Five

Minnesota Statutes section, 211B.15, provides two separate avenues for nonprofit corporations to contribute to political committees registered with the Board. In Minnesota Statutes section 211B.15, subdivision 15, nonprofit corporations with certain characteristics may make political contributions to Minnesota committees:

Subd. 15. **Nonprofit corporation exemption.** The prohibitions in this section do not apply to a nonprofit corporation that:

- (1) is not organized or operating for the principal purpose of conducting a business;
- (2) has no shareholders or other persons affiliated so as to have a claim on its assets or earnings; and
- (3) was not established by a business corporation or a labor union and has a policy not to accept significant contributions from those entities.

A nonprofit corporation that meets these qualifications may provide administrative support and fundraising services in any amount to the SSF without violating the prohibition on corporate contributions explained in Opinion One. Therefore, a principal campaign committee may accept a contribution from an SSF with a connected organization that is a nonprofit corporation if that

nonprofit corporation meets the qualifications in section 211B.15, subdivision 15. The administrative and fundraising support from the nonprofit corporation is an in-kind contribution to the SSF, and therefore must be accurately valued and reported as a contribution from the nonprofit corporation to the SSF on any underlying disclosure statement that must be provided to the principal campaign committee with the contribution.

The second avenue for nonprofit corporation contributions is found In Minnesota Statutes section 211B.15, subdivision 17. This subdivision provides that any nonprofit corporation, including nonprofit corporations that do not qualify under subdivision 15, may provide limited administrative support to one Minnesota political committee or fund:

Subd. 17. **Nonprofit corporation political activity.** It is not a violation of this section for a nonprofit corporation to provide administrative assistance to one political committee or political fund that is associated with the nonprofit corporation and registered with the Campaign Finance and Public Disclosure Board under section 10A.14. Such assistance must be limited to accounting, clerical or legal services, bank charges, utilities, office space, and supplies. The records of the political committee or political fund may be kept on the premises of the nonprofit corporation.

The administrative assistance provided by the nonprofit corporation to the political committee or political fund is limited annually to the lesser of \$5,000 or 7-1/2 percent of the expenditures of the political committee or political fund.

A nonprofit corporation that provides administrative support under subdivision 17 is required by Minnesota Statutes section 10A.20, subdivision 3(o), to disclose to the recipient committee or fund the aggregate value of each type of administrative support provided.

Consistent with this provision a principal campaign committee may accept a contribution from an SSF with a connected association that is a nonprofit corporation if the nonprofit corporation limits its total administrative support to the types of assistance provided in the statute, and in an amount that is the lesser of \$5,000 or 7-½ percent of the expenditures of the political committee or fund. The amount of administrative support received by the SSF must be included on any underlying disclosure statement that must be provided to the principal campaign committee.

Issue Six

May a principal campaign committee accept a contribution from an unregistered association that is a federally-registered nonconnected committee receiving limited administrative support from a partnership?

Opinion Six

Yes. As provided in Opinion Three a partnership is not a type of corporation that is prohibited from making political contributions in Minnesota. The Board understands that a nonconnected political committee must report administrative support and fundraising expenditures as contributions. Therefore the administrative support provided by the partnership should already be included on the nonconnected committee's FEC report , which may be used as the required underlying disclosure statement for contributions to principal campaign committees that exceed \$200.

Issue Seven

May a principal campaign committee accept a contribution from an unregistered association that is a federally-registered nonconnected committee receiving limited administrative support from an unincorporated association?

Opinion Seven

Unincorporated associations may take many forms, including 527 organizations that collect money for political purposes but do not register as political committees with the FEC or in any state. In some cases a 527 or other unincorporated association only accepts contributions from individuals. In other cases, however, the unincorporated associations receive both corporate and individual contributions. Because of the unpredictable sources of funding for unincorporated associations the Board cannot provide a general opinion on this question without specific factual information on the contributing unincorporated association.

The Board notes that some 527 organizations maintain separate accounting for contributions from individuals and contributions from corporations. Under Chapter 10A a 527 organization that maintains separate accounts for individual and corporate contributions is, nonetheless, accepting corporate contributions. A 527 that accepts corporate contributions may not make a contribution to a principal campaign committee, and may place a committee that accepts the 527's contribution in danger of violating the corporate contribution prohibition.²

Issue Eight

May a principal campaign committee accept a contribution from an unregistered association that is a federally-registered nonconnected committee receiving limited administrative support from a connected organization that is a limited liability company?

Opinion Eight

No. As provided in Opinion Two a limited liability company is a type of corporation that is prohibited from making a contribution either directly or indirectly to a principal campaign committee. Therefore a principal campaign committee may not receive a contribution from a nonconnected committee that receives administrative support from a limited liability company.

The Board understands that under federal law a limited liability company without stockholders is not considered a corporation. That distinction is not recognized in Minnesota campaign law.

² See the Board's findings in the matter of the complaint of Pat Shortridge regarding the Minnesota DFL and the Democratic Legislative Campaign Committee.
https://cfb.mn.gov/pdf/bdactions/1300_Findings.pdf?t=1527787483

Issue Nine

May a principal campaign committee accept a contribution from an unregistered association that is a federally-registered nonconnected committee receiving limited administrative support from another federally-registered political committee?

Opinion Nine

Yes. As stated earlier in this opinion, the purpose of requiring disclosure from unregistered associations is to prevent contributions that are prohibited under Chapter 10A, and to insure that there is public disclosure regarding the unregistered associations participating in Minnesota state elections. In the questions so far considered the issue was whether the unregistered association directly had received funding from a source prohibited under Minnesota law. Because the federally-registered PAC providing the administrative support may itself have received corporate contributions in the form of administrative support, the question in opinion nine is whether any contributor to the unregistered association has in the past received funding from a source prohibited under Minnesota law.

There is a practical limit on how many layers of contributions may be reasonably reviewed when accepting a contribution from an unregistered association that is a federally-registered PAC. Information about who contributed to the federally-registered PAC's contributors would not be included in the disclosure provided to the principal campaign committee with the contribution. That information could only be determined by researching the actual sources of funding of the federally-registered PAC that provided administrative support to the PAC making the contribution to the principal campaign committee.

The Board concludes that requiring that level of analysis would as a practical matter make it impossible to accept contributions from a federal PAC. That result would be inconsistent with clear statutory guidance that a principal campaign committee may accept a contribution from an unregistered association. Requiring principal campaign committees to determine the sources of funding used by an unregistered association's underlying contributors also would be inconsistent with the provision in Minnesota Statutes section 10A.27, subdivision 13, requiring a disclosure statement from only the unregistered association that is making the contribution to the principal campaign committee. For these reasons, a principal campaign committee may accept a contribution from a federally-registered nonconnected committee that has received a contribution, whether or not in the form of administrative support, from another federally-registered PAC.

Issue Ten

May a principal campaign committee accept a contribution from an unregistered association registered in another state receiving limited administrative support from a connected organization that is a nonprofit corporation, if the nonprofit corporation otherwise complies with Minnesota Statutes, section, 211B.15 subdivisions 15 and 17?

Opinion Ten

Yes, with the same limitations as provided in Opinion Five.

The Board notes that 27 states allow direct corporate contributions to political committees registered in that state.³ A principal campaign committee that decides to accept a contribution from a political committee not registered in Minnesota, or from any unregistered association, is responsible for ensuring that the contribution is permitted under Chapters 10A and 211B. This responsibility should involve an examination of the disclosure report that must be provided with any contribution of over \$200 and may require a conversation with the unregistered association making the contribution.

Issue Eleven

May a principal campaign committee accept a contribution from a Leadership PAC directly or indirectly established, financed, maintained, or controlled by a candidate for federal office or individual holding federal office?

Opinion Eleven

No. Minnesota Statutes section 10A.27, subdivision 9(c), limits contributions between state federal candidates. The provision provides:

(c) A candidate's principal campaign committee must not accept a contribution from, or make a contribution to, a committee associated with a person who seeks nomination or election to the office of president, senator, or representative in Congress of the United States.

This prohibition is not limited to the authorized committee of the federal candidate. Instead the prohibition extends to "a committee associated with" a federal candidate. Because a federal leadership committee is directly or indirectly established, financed, maintained, and controlled by a candidate for federal office, it is clearly associated with a federal candidate. Therefore, a principal campaign committee may not accept a contribution from a federal leadership committee.

Issued June 6, 2018

/s/ Carolyn Flynn
Carolyn Flynn, Chair
Campaign Finance and Public Disclosure Board

³ Survey conducted by the Maine Commission on Governmental Ethics and Election Practices. http://www.lvwme.org/files/State_Limits_on_Contributions_to_PACs.pdf