

**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)**

ADVISORY OPINION 448

SUMMARY

A principal campaign committee is the vehicle for depositing and reporting a loan made to benefit a candidate's campaign. A loan to a principal campaign committee from an individual is subject to the applicable reporting requirements and limits found in Chapter 10A.

Facts

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

1. The candidate has filed for a state-level office and will appear on the ballot for that office this year. The candidate wishes to devote his or her full time to the campaign, but does not have the financial resources to campaign full time.
2. An individual who has no role in the candidate's campaign is willing to make a loan to the candidate so that the candidate may campaign full time. The funds for the loan will not come from a corporation or a financial institution. The individual who is willing to make the loan would use only his or her personal funds for the loan.
3. The loan would be made with a written agreement that would provide for repayment of the loan over a set number of years, and a market value interest rate would apply to the loan.
4. The loan agreement would contain the following provisions:
 - a) None of the proceeds of the loan will be used for political purposes in any way;
 - b) The proceeds of the loan will not be intermingled with the candidate's principal campaign committee funds;
 - c) The loan must be repaid from the candidate's personal funds; and
 - d) The intent of the loan is to cover personal living expenses that would ordinarily be covered by the candidate's personal income.
5. For the purposes of issue number 5, the Board may assume that the individual making the loan is aware that providing information on a planned independent expenditure to the candidate, or any agent of the candidate, would defeat the independence of the expenditure.

Issue One

Is the loan subject to any reporting requirements under Minnesota Statutes Chapter 10A?

Opinion One

Yes. The loan is to an individual who is a candidate as defined in Minnesota Statutes section 10A.01, subdivision 10. As required by Minnesota Statutes section 10A.105, subdivision 1, the candidate has formed and has registered a principal campaign committee for the office sought. The principal campaign committee is the mechanism for making and reporting all financial activity related to the candidate's campaign.

Chapter 10A does not distinguish contributions made to the candidate from contributions made to the candidate's principal campaign committee, or provide a way to exempt contributions made directly to the candidate from the reporting requirements. To insure that the reports of the principal campaign committee disclose all contributions made to benefit the campaign, Minnesota Statutes section 10A.15, subdivision 3, provides in part that "[a]ll contributions received by or on behalf of a candidate ... must be deposited in an account designated "Campaign Fund of (name of candidate...)."

Indeed, the compliance requirements of Chapter 10A apply to the candidate, with the principal campaign committee providing the disclosure to ensure that the candidate meets those requirements. For example, the voluntary campaign spending limits apply to the candidate who signs the public subsidy agreement. Minn. Stat. § 10A.25, subd. 1. Further, the contribution limits in Chapter 10A are applied to the candidate for a given office, with the direction that "a candidate must not permit the candidate's principal campaign committee to accept" contributions in excess of those limits. Minn. Stat. § 10A.27, subd. 1. Minnesota Statutes section 10A.20 then specifies the timing and contents of the reports that the candidate's principal campaign committee must file with the Board to disclose those contributions and expenditures.

Therefore, the loan, while made to the candidate, is reportable under Chapter 10A if it is a contribution to the candidate's campaign. The requester states that the loan agreement will provide that none of the loan proceeds will be used for political purposes in any way, and because of this the funds from the loan will not be deposited in the principal campaign committee account. By themselves, these facts could lead to the conclusion that the loan is not a contribution to the candidate's committee. However, the requester's statement stands in contradiction to the stated purpose of the loan. As stated in the facts of the opinion request, the individual who is offering to make the loan is doing so knowing that the funds will be used to allow the candidate to campaign full time. That is the only stated reason the loan is being offered, or would be accepted.

The expected direct result of the loan is to increase the candidate's availability to campaign for office. The Board does not find a way to reconcile that result with the statement that the funds from the loan will not be used for a political purpose. Chapter 10A does not attempt to delineate all the ways in which money is used for a political purpose, but it does define reportable campaign expenditures broadly to include expenditures "...made for or incurred for the purpose of influencing the nomination or election of a candidate...". Minn. Stat. § 10A.01, subd. 9.

With the stated purpose of the loan so clearly tied to the candidate's campaign for office, the Board concludes that the loan is a contribution to the candidate, and if made must be reported by the principal campaign committee as required in Minnesota Statutes section 10A.20, subdivision 3 (e).

If the Board were to recognize a way for individuals to make loans to candidates to benefit the campaign outside of the reporting requirements of Chapter 10A, then the individual making the loan could avoid applicable contribution limits. Additionally the individual making the loan would have anonymity not available to other principal campaign committee contributors. The end result would be a circumvention of the contribution limits and disclosure requirements of Chapter 10A.

Issue Two

Would this loan constitute a contribution from the individual who wishes to make the loan to the candidate or the candidate's principal campaign committee?

Opinion Two

As explained in Issue One, the loan must be reported by the candidate's principal campaign committee. A loan may become a contribution under the circumstances described in Minnesota Statutes, section 10A.01, subdivision 11 (b):

(b) "Contribution" includes a loan or advance of credit to a political committee, political fund, principal campaign committee, or party unit, if the loan or advance of credit is: (1) forgiven; or (2) repaid by an individual or an association other than the political committee, political fund, principal campaign committee, or party unit to which the loan or advance of credit was made. If an advance of credit or a loan is forgiven or repaid as provided in this paragraph, it is a contribution in the year in which the loan or advance of credit was made.

Because a loan may become a contribution, a loan from an individual may not be in an amount greater than the contribution limit for the office sought. Further, the loan may not be endorsed for an amount greater than the applicable contribution limit of the individual who endorses the loan, as provided in Minnesota Statutes section 10A.27, subdivision 8.

Issue Three

Does this loan constitute an approved expenditure on behalf of the candidate?

Opinion Three

No. An approved expenditure is a type of in-kind contribution in which goods or services are purchased by an entity or individual on behalf of the principal campaign committee. Minn. Stat. § 10A.01, subd. 4. As provided in the facts of this opinion the loan will provide funds for the candidate's use.

Issue Four

If the individual who is willing to make the loan has already given the maximum allowed contribution to the candidate's principal campaign committee, would the individual still be allowed to make the loan?

Opinion Four

No. Outstanding loans either made or endorsed by an individual are included in the aggregation of contributions counted towards the contribution limit of the individual, as provided in Minnesota Rules, part 4503.0700, subpart 1.

Issue Five

Is the legality of the loan impacted if the individual making the loan is also a board member of an association that makes independent expenditures in support of the candidate's campaign?

Opinion Five

No. The scenario presented in the request does not suggest that the independent expenditures were discussed with the candidate or any agent of the candidate. Therefore, the scenario does not present any opportunity for actions that would defeat the independence of the expenditures.

Additionally, Minnesota Laws 2018, chapter 119, section 24 (to be codified as Minnesota Statutes section 10A.177) provides that a donation to a candidate from an individual or entity that makes independent expenditures does not by itself compromise independent expenditures made on behalf of the candidate.

Issue Six

Are the answers to any of the prior opinions changed depending on whether the candidate signed or did not sign the public subsidy agreement for the election cycle?

Opinion Six

No. None of the opinions provided are reliant on the candidate signing the public subsidy agreement.

A candidate who does not sign the public subsidy agreement is not limited in the amount of funds donated or loaned to his or her own principal campaign committee, and such a candidate would also be free to endorse a loan from a financial institution to the committee in any amount.

Issued September 12, 2018

/s/ Carolyn Flynn

Carolyn Flynn, Chair
Campaign Finance and Public Disclosure Board