

**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 455

SUMMARY

A nonprofit corporation may make political contributions in Minnesota as an unregistered association if the nonprofit corporation is organized and operated consistent with requirements provided in Chapter 211B. An unregistered association may contribute more than \$200 to no more than three registered committees during a calendar year. Committees registered with the Federal Election Commission may provide a government website address in order to meet the requirement for a disclosure statement to accompany contributions of over \$200.

Facts

As representatives of a political committee (the Committee) registered with the Federal Election Commission (FEC), you ask the Campaign Finance and Public Disclosure Board for an advisory opinion based on the following facts.

1. The Committee is registered with the FEC as a "Super PAC". Under federal law a Super PAC is a political committee that makes only independent expenditures for federal elections. A Super PAC may solicit and accept unlimited contributions from individuals, corporations, labor organizations, and other political committees.
2. The Committee has a policy to only accept contributions from individuals.
3. The Committee does not accept contributions from corporations. This includes in-kind administrative support for the Committee, which under FEC regulations and advisory opinions is a corporate contribution that may be accepted by a Super PAC.
4. The Committee has invested some of the contributions it has received and earns income from the investments. The income from the investments is reported to the FEC.
5. For liability purposes the Committee has incorporated as a nonstock corporation. The Committee is also a nonprofit corporation and is not organized or operating for the principal purpose of conducting a business. The Committee has no shareholders, and

no persons have a claim on the Committee's assets or earnings. The Committee was not established by a business corporation or a labor union.

6. The Committee files periodic reports with the FEC that are similar to reports filed by political committees under Chapter 10A in that donors, miscellaneous income from investments, and expenditures are itemized when the value of the transaction exceeds \$200 in a calendar year. Reports filed by the Committee are available for viewing on the FEC's website.

With this background in mind, the Committee asks the following questions.

Issue One

Is the Committee able to make political contributions in Minnesota under the exemption for certain nonprofit corporations provided in Minnesota Statutes section 211B.15, subdivision 15?

Opinion One

Yes. Minnesota Statutes section 211B.15, subdivision 2, prohibits most corporations from offering or making a political contribution to a candidate committee, political party unit, political committee, or political fund (registered committees).¹ However, an exception to this prohibition is made in subdivision 15 of the statute for nonprofit corporations that have three characteristics. The prohibition on political contributions does 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 who have a claim on the nonprofit's assets or earnings; and (3) was not established by a business corporation or a labor union, and has a policy to not accept significant contributions from business corporations or labor unions.

As provided in the facts of this opinion, the Committee meets all of the conditions needed in order to make political contributions as provided in Minnesota Statutes section 211B.15, subdivision 15, in that it is not organized, or operated, in order to conduct a business. The Committee was incorporated for liability protection, but has no shareholders or other persons with a claim on its assets or earnings. And finally, the Committee only accepts contributions from individuals.

The Committee has invested some of the receipts it has received, and from the investments receives income that the Committee may subsequently use to make contributions. The proceeds from the investments are not "contributions" as defined in Minnesota Statutes section 10A.01, subdivision 11, in that income from the investments is not given to the Committee for a political purpose. It is not unusual for registered committees to use interest-bearing checking accounts, savings accounts, certificates of deposit, and other investments that provide a return on money that is not immediately needed for an election. Income from the

¹ The prohibition on receiving corporate contributions does not apply to independent expenditure committees and independent expenditure funds, Minnesota Statutes section 211B.15, subdivision 3.

investments are reported as miscellaneous income, and not as a contribution from the bank or institution that provided the investment instrument. The Board does not consider proceeds from these types of investments, by itself, as business activity that will prevent an unregistered association from qualifying for the nonprofit corporation exemption needed to make political contributions in Minnesota.

The Board notes that under federal law the Committee could accept contributions from corporations and labor unions. If the Committee changes its internal policy on accepting contributions from only individuals, the answers provided in this advisory opinion cannot be relied upon by the Committee.

Issue Two

May the Committee make political contributions of over \$200 to up to three candidate committees, political party units, political committees, or political funds?

Opinion Two

Yes. Minnesota Statutes section 10A.27, subdivisions 13-16, provide limitations on unregistered associations that wish to make contributions to registered committees. Under Minnesota Statutes section 10A.27, subdivision 13, an unregistered association, that is not otherwise barred by the prohibition on corporate contributions, may make contributions of more than \$200 in aggregate to no more than three separate registered committees during a calendar year.² The unregistered association may make multiple contributions to each of the three registered committees. With each contribution the unregistered association must provide a disclosure statement to the recipient committee if the aggregate amount given to the committee within the calendar year exceeds \$200. If an unregistered association provides contributions of over \$200 to more than three separate registered committees during a calendar year, then the unregistered association is required to register as a political committee or political fund with the Board.

Issue Three

May the Committee satisfy the disclosure requirement for contributions from an unregistered association by providing a certified written statement to recipient committees that provides the URL to the FEC webpage where the Committee's filings can be viewed?

Opinion Three

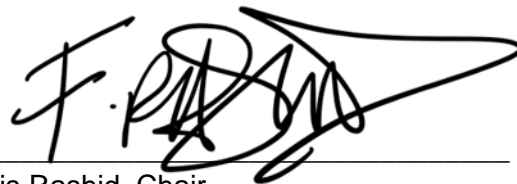
Yes. The disclosure statement provided by the Committee must meet the disclosure requirements found in Minnesota Statutes section 10A.20. Among the requirements is that donor contributions, expenditures, and contributions to other entities must be itemized if they exceed \$200. This is the same itemization threshold generally required of committees registered with the FEC, and largely because of that common itemization threshold, FEC reports

² An unregistered association may make contributions to an unlimited number of independent expenditure political committees and funds and ballot question committees and funds pursuant to Minnesota Statutes section 10A.27, subdivisions 14-15, without registering with the Board.

resemble reports filed by committees registered with the Board. FEC committees report on a more frequent schedule during a non-election year than is required under Chapter 10A, and often report on a quarterly or monthly basis during much of each election year, so FEC reports sometimes do not match the reporting periods provided in Chapter 10A. Nonetheless, the Board accepts that FEC reports meet the disclosure statement requirements for unregistered associations when a contribution of over \$200 is made to a registered committee, so long as the report or multiple reports include the entire calendar year through the date the contribution was made, or if the contribution was made within the first 30 days of a calendar year, a period of at least 30 days immediately preceding the date the contribution was made.

The disclosure statement required from the Committee for contributions of over \$200 is provided to the recipient committee, which in turn forwards the statement to the Board at the next reporting period for the registered committee. Disclosure statements are often large, in particular from FEC committees. To reduce the bulk of disclosure statements forwarded to the Board, and to make the disclosure statements easier for the public to access from a computer, the legislature amended the disclosure statement requirement in 2021 so as to allow an unregistered association to either file a disclosure statement on paper, or provide the recipient committee with the address of a government website where the disclosure statement for the unregistered association may be viewed. The FEC's website is a government website, and provides access to the periodic reports filed by the Committee. If the Committee provides a statement to recipient committees certifying that the applicable report(s) filed with the FEC are true and correct, and provides the web address at which the report(s) may be viewed, it will have complied with the disclosure statement requirements of Minnesota Statutes section 10A.27, subdivision 13. If the FEC website address provides access to multiple Committee reports, then the statement should identify the specific report(s) that provide the disclosure required for the contribution.

Issued: April 6, 2022

A handwritten signature in black ink, appearing to read 'F. Rashid', written over a horizontal line.

Faris Rashid, Chair
Campaign Finance and Public Disclosure Board