

**STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD**

.....

January 3, 2012

Room 225

Minnesota Judicial Center

.....

MINUTES

The meeting was called to order by Chair Scanlon.

Members present: Bettermann, McCullough, Scanlon, Swenson, Wiener

Member Luger informed the Executive Director prior to the meeting that he would not be able to attend.

Others present: Goldsmith, Sigurdson, Larson, White, Pope, staff; Hartshorn, counsel

MINUTES (December 8, 2011)

Member Bettermann's motion: To approve the December 8, 2011, minutes as drafted.

Vote on motion: Unanimously passed.

CHAIR'S REPORT

Board meeting schedule

The next Board meeting is scheduled for Tuesday, February 7, 2012. Members Wiener and McCullough informed other members that they both had a conflict. Executive Director Goldsmith will poll members for an alternate date.

Report of nominating committee for 2012 officers

Member Bettermann reported that the nominating committee, consisting of the Chair and Ms. Bettermann, had met and nominated Mr. McCullough to serve as chair and Mr. Luger to serve as Vice Chair during 2012.

Whereupon the following motion was made:

Member Scanlon's motion: That the report of the nominating committee be adopted and that Mr. McCullough is elected to serve as Chair and Mr. Luger is elected to serve as Vice Chair during 2012.

Vote on motion: Unanimously passed.

Member McCullough assumed the position of Chair for the remainder of the meeting.

EXECUTIVE DIRECTOR'S TOPICS

Executive Director Goldsmith reported on recent Board office operations.

Guidance related to ballot questions

Mr. Goldsmith presented the Board with a compiled statement of guidance related to ballot question disclosure which is attached to and made a part of these minutes. Mr. Goldsmith reported that the compilation was provided for informational purposes and did not represent a change from the guidance that the Board adopted during 2011.

Discussion of reporting of in-kind contributions from unregistered associations to ballot question political committees or funds

Mr. Goldsmith indicated that as a result of the issuance of Advisory Opinion 421, questions had arisen regarding whether associations that were not political committees and had not registered political funds with the Board could make in-kind contributions to registered ballot question political committees or funds. Mr. Goldsmith explained that in previous ballot questions, such contributions had been permitted and that they had been permitted in the independent expenditure context during the 2010 elections. Mr. Goldsmith indicated that an advisory opinion request on the subject was expected.

Discussion of letter received from Senator Perry

Mr. Goldsmith informed members that he received a letter from Senator Perry on December 15, 2011, regarding the Statements of Guidance issued by the Board. Mr. Goldsmith indicated that he would provide a written response to the Senator's concerns.

ENFORCEMENT REPORT

The Board considered the monthly enforcement report, presented by Assistant Executive Director Sigurdson. The Board took the following actions related to matters on the Enforcement Report:

Consent Items

Authorization for inactive committee to retain active status. A political committee that does not make an expenditure or disbursement for two years is required to dissolve. A principal campaign committee is required to dissolve when six years has elapsed since filing for office or serving in office.

Craig Miller Volunteers. Mr. Miller requests to remain active for the 2012 election. A bank statement was provided that supports the ending cash balance on the 2010 report.

Friends of Brian Dauer., Mr. Dauer requests to remain active to possibly run in 2012. A bank statement was provided that supports the ending cash balance on the 2010 report.

After discussion the following motion was made,

Member Scanlon's motion: To approve the consent items.

Vote on motion: Unanimously passed.

Informational Items

A. Payment of a late filing fee for an Original Statement of Economic Interest:

Bob Ramsey, Lower Rum River WMO, \$40

B. Payment of a late filing fee for 2010 Year-end Report of Receipts and Expenditures:

Minnesotans for Benjamin Kruse, \$625

C. Payment of a late filing fee for Annual Report of Lobbyist Principal:

Open Source Technology, \$25
Reproductive Health Alliance, \$15

D. Payment of a late filing fee for a Lobbyist Disbursement Report due 1/18/2011:

Etharin Cousin, Sodexo, \$30

E. Payment of a civil penalty for exceeding special source aggregate limit:

Tim Mahoney for House, \$465- 4th installment

Jerry Newton Committee, \$145.63. Mr. Newton entered into a negotiated conciliation agreement on November 11, 2011. The agreement stated that if Mr. Newton registered a committee within four years, the balance of \$145.63 would be due. Mr. Newton chose to pay the balance and remain active.

Volunteers for Phyllis Kahn, \$150.00. During 2010, the Committee accepted \$6,650 in contributions from special sources. The total amount of these contributions exceeded by \$150 the applicable limit on aggregate contributions from special sources, which for a state representative candidate was \$6,500. Representative Kahn entered into a conciliation agreement on November 10, 2011.

F. Payment of a civil penalty for a contribution from an unregistered association:

Republican Party of Minnesota, \$900

G. Payment of a civil penalty for filing a false report:

Terri Griffiths, \$400- 5th installment

H. Deposit to the General Fund, State Elections Campaign Fund:

Duke Powell Volunteer Committee, \$150.24 (terminating)

ADVISORY OPINION REQUEST

Mr. Goldsmith presented the Board with a memorandum which is attached to and made a part of these minutes.

Advisory Opinion #419 and #422 were laid over at the December meeting. Both pose questions related to disclosure for associations that wish to engage in actions to promote or defeat a ballot question. Some of the issues presented are similar to those addressed in Advisory Opinions #420 and #421, which were adopted at the December meeting, and some of the issues are new.

Advisory Opinion #419 has been made public by release of consent from the requestor.

Advisory Opinion Request #419 – Disclosure related to ballot question committees

The Advisory Opinion request was received by the Board on November 9, 2011, from the National Organization for Marriage (NOM)

The National Organization for Marriage is a nonprofit tax exempt corporation, recognized by the IRS as a 501(c)(4), that raises and spends funds to support traditional marriage and legal definition of marriage as described in the ballot question scheduled to be voted on by the citizens of Minnesota in the 2012 General Election. The request asks several questions about the disclosure required by chapter 10A of Minnesota Statutes as it applies to NOM.

Mr. Goldsmith presented a draft response to the request and reviewed each question and answer with the Board.

Mr. Goldsmith informed the Board of one amendment to the draft that was made after its initial distribution to Board members. At the end of Question 4, the last sentence refers to a "\$100-or-more" threshold. The correct reference is to a "more-than-\$100" threshold. The change has been made on the copy available for signing by the Chair.

The Board discussed the request and the applicable provisions of Chapter 10A.

After discussion, the following motion was made:

Member Bettermann's motion: To adopt the Advisory Opinion #419 as amended by staff.

Vote on motion: Unanimously passed.

Advisory Opinion Request #422-Disclosure related to ballot question committees

The Advisory Opinion request was received by the Board on November 11, 2011, from an association. The request and the opinion are non-public data pursuant to statute. Staff has prepared a generic version of the opinion for release to the public.

The association indicates that it will engage in educational activities to promote and support the Minnesota Ballot question related to the definition of marriage, which is on the ballot in November, 2012. The association expects to receive contributions from other associations, including religious organizations such as churches, synagogues, mosques, or similar associations. The request asks several questions to clarify how it should inform the leaders of potential organization donors regarding their activities, solicitations, and expenditures in support of the Minnesota ballot question. The association is also asks for clarification to understand its obligations regarding he reporting and disclosure of underlying sources of money used to promote the ballot question.

Mr. Goldsmith presented a draft response to the request and reviewed each question and answer with the Board.

Mr. Goldsmith informed the Board of two amendments to the draft that were made after its initial distribution to Board members. First, In the first sentence of the opinion under Question 8, there is a reference to "paragraph 1 of the guidance". The correct reference is to "paragraph (a) of the guidance". Second, after feedback from the requester, the response to Question 9 was re-written to be more responsive to the request. The original response referred back to the answers to Questions 7 and 8. The new response directly addresses Question 9 by indicating that the described communication would be subject to a presumption that it is excluded from the definition of a ballot question expenditure. The changes have been incorporated into both the non-public and public versions of the opinion that are available for signing by the Chair.

The Board discussed the request and the applicable provisions of Chapter 10A. After discussion, the following motion was made:

Member Wiener's motion: To adopt the Advisory Opinion #422 as amended.

Vote on motion: Unanimously passed.

LEGAL COUNSEL'S REPORT

Board members reviewed a memo from Counsel Hartshorn outlining the status of cases that have been turned over to the Attorney General's office. The Legal Counsel's Report is made a part of these minutes by reference.

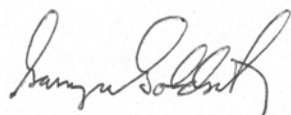
EXECUTIVE SESSION

The Chair recessed the regular session of the meeting and called to order the Executive Session. Upon completion of the Executive Session, the regular session of the meeting was called back to order. There were no items to be reported from the Executive Session.

OTHER BUSINESS

There being no other business, the meeting was adjourned by the Chair.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Gary Goldsmith".

Gary Goldsmith
Executive Director

Attachments:

January 3, 2012, Statement of Guidance

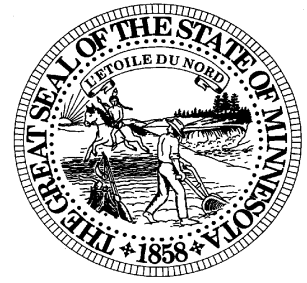
December 23, 2011, memorandum regarding Advisory Opinion #419 and #422

Advisory Opinion #419

Advisory Opinion #422-non public

Minnesota

Campaign Finance and Public Disclosure Board



Guidance related to Chapter 10A compliance for associations engaging in activities to promote or defeat a ballot question

**Campaign Finance and Public Disclosure Board
Statement of Guidance
Related to Ballot Question Disclosure
Compilation as of January 3, 2012**

General statements

Chapter 10A, known as the Campaign Finance and Public Disclosure Act, provides a comprehensive system of disclosure of money used to influence state elections in Minnesota.

The Board believes that in enacting Chapter 10A, the Minnesota Legislature intended to create a disclosure system that provided the highest level of disclosure of the use of money for political purposes as is constitutionally permitted.

The Board believes that one important purpose of Chapter 10A is to provide voters with information that will help them make decisions in the political marketplace.

The Legislature has entrusted to the Board the responsibility of interpreting and administering Chapter 10A so as to carry out the Legislature's intent.

1. Enforcement of registration and reporting requirements for ballot question political committees and funds.

Registration: The Board will take no action and impose no late filing fee or civil penalty if a political committee or fund that exists to promote or defeat a ballot question registers with the Board no later than 14 days after the committee or fund has made contributions, received contributions, or made expenditures in excess of \$5,000, or by the end of the next business day after it has received a loan or contribution that must be reported under section 10A.20, subdivision 5, whichever is earlier.

Reporting: The treasurer of a ballot question political committee or fund must begin to file the reports required by Section 10A.20 in the first year it is required to register with the Board.

Individual: The Board will take no action and impose no late filing fee or civil penalty if an individual who uses personal funds to make expenditures to promote or defeat a ballot question files the report required by Section 10A.20, subdivision 6, when the total of the expenditures exceeds \$5,000.

2. Guidance on the definition of ballot question expenditure

An expenditure to promote or defeat a ballot question (a ballot question expenditure) is an expenditure:

(a) that expressly advocates the adoption or defeat of a ballot question measure, or

(b) that is susceptible of no reasonable interpretation other than as an appeal to vote for or against a ballot question measure.

(i) A communication is presumed to be a communication to promote or defeat a ballot question if it (1) mentions the issue that is the subject of the ballot question; (2) states a position on that issue; and (3) mentions the ballot question that addresses the issue, mentions voting on the issue, or otherwise indicates that people will be able to vote on the issue.

(ii) A communication that discusses an issue that is the subject of a ballot question but does not mention the ballot question that addresses the issue; does not mention voting on the issue; and otherwise does not indicate that people will be able to vote on the issue is presumed to be excluded from the definition of ballot question expenditure under Chapter 10A.

3. Guidance on the classification of a transfer of money received by an association as a "contribution" or a "general donation"

Statutory definition of "contribution"

A "contribution" is "money, a negotiable instrument, or a donation in-kind that is given to a political committee, political fund, principal campaign committee, or party unit." Minnesota Statutes Section 10A.01, subd. 11.

Statutory definition of "political fund"

A "political fund" is "an accumulation of dues or voluntary contributions by an association other than a political committee, principal campaign committee, or party unit, if the accumulation is collected or expended to influence the nomination or election of a candidate or to promote or defeat a ballot question."

Minnesota Statutes Section 10A.01, subd. 28.

A political fund is an accumulation of an association's money tracked by some accounting mechanism. It is not a separate association or legal entity.

General donation

A "general donation" is money given to a non-major-purpose association that does not constitute a "contribution" under Chapter 10A and is not restricted by the donor as to its use. General donations may be referred to by the recipient as "membership dues" "fees" "contributions", "donations", or similar terms. Whether money received by a non-major-purpose association is a "general donation" or a "contribution" is not determined by the words the recipient uses to describe it, but by the purpose for which the money was given, as determined by the criteria set forth in this Guidance.

General treasury money

An association's "general treasury money" is all of the money received by the association in the form of general donations.

Contributions

(A) Money designated for ballot question expenditure purposes

Money received by an association is a contribution if the contributor specified that the money was given to support the association's campaign to promote or defeat the ballot question.

(B) Money given in response to a solicitation including an express request

Money given in response to a solicitation that requests money for the express purpose of supporting the association's campaign to promote or defeat the ballot question is a contribution.

An express request is a request that asks for money and states that the money is sought to support the ballot question campaign.

(C) Money given in response to a solicitation that is the functional equivalent of an express request.

(1) Money given in response to a solicitation that meets all of the following criteria is a contribution:

- i) The solicitation is made after the date of final enactment by the legislature of the bill placing the subject ballot question on the general election ballot;
- ii) The solicitation clearly identifies the subject ballot question; and
- iii) The solicitation is susceptible to no reasonable interpretation other than that money given as a result of the solicitation will be used to promote or defeat the subject ballot question.

(2) For the purpose of determining whether a solicitation clearly identifies the ballot question, the "solicitation" includes:

- i) For a mailed solicitation: the solicitation itself and any material included in the same mailing;
- ii) For an electronically transmitted solicitation: the electronic communication itself and any attachments to the communication. An electronic solicitation also includes material accessed directly by a hyperlink in the solicitation or its attachments. Intermediate hyperlinks inserted merely to subvert the direct link requirement will not be considered when examining whether the solicitation directly links to a page that refers to the subject ballot question;

(D) Money solicited in the name of an association's political fund

Some associations choose to establish a more formal structure than is required for their political fund accounts. They may set up bank accounts separate from those used for the association's general treasury money. They may solicit money under the name of

the political fund as if the fund were, itself, an entity separate from the association. Money given in response to solicitations that ask for money in the name of the political fund itself are contributions.

Limitation

It is the Board's intention that the definitions of "contribution" set forth in this Guidance be applied in favor of excluding transfers of money from the definition of "contribution" in any case where it is not clear that all of the specified criteria have been met.

4. Guidance on the level of proof and range of threats that would require or permit the Board to exempt an individual from disclosure of a contribution to a ballot question political committee or fund.

When considering requests for waivers of disclosure requirements, the Board will apply both the statutory requirements of Chapter 10A and such constitutional requirements as have been clearly articulated by the U.S. Supreme Court. Staff is directed to conduct further research and make recommendations for language that the Board may consider for the adoption of a statement of policy.

5. Requirements for disclosure of underlying sources when an association not registered with the Board contributes or transfers general treasury money to a registered political committee or fund that limits its activities to those to promote or defeat a ballot question.

(A) An independent expenditure political committee or fund is a political committee or fund that makes only independent expenditures and those types of disbursements permitted under Section 10A.121, subd. 1, which include expenditures to promote or defeat a ballot question. An independent expenditure political committee or fund is not required under Chapter 10A to make independent expenditures. It may limit its activities to those described in Section 10A.121,

(B) A political committee or an association maintaining a political fund that intends to limit its political activities to promoting or defeating a ballot question may operate as an independent expenditure political committee or fund organized for ballot question purposes. In that case, it may accept contributions from associations not registered with the Board subject to the underlying source disclosure requirements of 10A.27, subds. 14 and 15, rather than the requirements of sections 10A.12, subd. 5, or 10A.27, subd. 13.

(C) A political committee or fund registered under paragraph (B), above, must also comply with the requirements of Section 10A.27, subd. 16, which requires the treasurer to file statements of underlying disclosure with the Board.

(D) Unregistered associations are cautioned that underlying source disclosure under Sections 10A.27, subds. 14 and 15, is available only for transfers of revenue from the operation of a business, membership dues or fees, and general contributions received by the unregistered association. An association that is not a political committee and that accepts contributions for the purpose of promoting or defeating a ballot question is required to register its own political fund to accommodate disclosure of those contributions, subject to registration thresholds.

(E) Section 10A.27, subd. 15, provides three methods for determining whether an underlying source of general treasury money contributed or transferred to a registered

political committee or fund must be itemized. The method that will result in the association being able to transfer the highest amount of money with the least itemized disclosure is provided in Section 10A.27, subd. 15(b)(2). Under that option, the association may allocate to its contribution or transfer the first \$999.99 of the total donations and membership dues or fees received from an individual or association by the donor association. Donors whose allocation to the contribution or transfer does not exceed this amount need not be itemized.

6. Separate Depositories Not Required for Political Funds

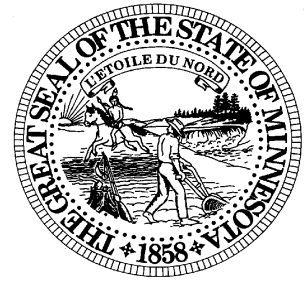
Chapter 10A does not include a requirement that an association other than a political committee, principal campaign committee, or party unit maintain a separate depository as a condition of raising or spending money to influence the nomination or election of candidates or to promote or defeat a ballot question.

The Board will not enforce Rule 4503.0200, subp. 6, as it relates to associations that are not political committees, principal campaign committees, or party units.

It is not "commingling" for an association that is not a political committee, principal campaign committee, or party unit to keep money raised or spent to influence the nomination or election of candidates or to promote or defeat a ballot question in the same depository it uses for its general treasury money, provided that the association maintains an accounting mechanism which separately accounts for the money that constitutes the association's political fund from the general treasury money of the association.

Minnesota

*Campaign Finance and
Public Disclosure Board*



Date: December 23, 2011

To: Board Members

From: Gary Goldsmith, Executive Director

Telephone: 651-296-1721

Re: Advisory Opinions 419 and 422

Staff has completed drafts for advisory opinions 419 and 422. A copy of each request and the corresponding draft is attached for your review. As with advisory opinions 420 and 421, issued at the last meeting these pose overlapping, but not identical, questions related to disclosure for associations that wish to engage in actions to promote or defeat a ballot question.

The responses are based on Chapter 10A and on the guidance the Board has provided over the past several months.

We should have more time at the January meeting than we did in December, so I will be able to more carefully review both the statutes and the Board's guidance as they relate to these requests.

Please note that advisory opinion 422 is nonpublic data. A generic public version is also attached. I have reviewed the background and questions in the generic version with the requester and he has no objections to them. I have not reviewed the opinion sections with him.

As with the recent past opinions, the drafts will be released as part of the public agenda. This will most likely occur on December 27th.

Please call me if you wish to discuss.

Attachments:

Request letter from National Organization for Marriage dated November 9, 2011

Draft response to this request, designated as advisory opinion 419

Request letter from the Minnesota Catholic Conference dated November 11, 2011

Draft response to this request, designated as advisory opinion 422

Draft public response designated as advisory opinion 422

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
pursuant to a consent for release of information signed by the requester

RE: Disclosure related to ballot question committees

To: Cleta Mitchell, Esq.
Foley & Lardner, LLP
3000 K Street NW, Suite 600
Washington, DC 20007

ADVISORY OPINION 419

SUMMARY

Minnesota Statutes Chapter 10A requires certain disclosure when an association accepts contributions or uses its general treasury money for expenditures to promote or defeat a ballot question. This opinion describes the statutory requirements under various scenarios presented by the requester

FACTS

As the attorney for the National Organization for Marriage, you ask the Campaign Finance and Public Disclosure Board for an advisory opinion. As a basis for your request, you provided a number of assumed facts and scenarios. The relevant assumed facts from the letter and scenarios are combined below and form the basis for this opinion.

1. The National Organization for Marriage ("NOM") is a nonprofit tax exempt corporation established under Section 501(c)(4) of the Internal Revenue Code.
2. NOM was founded in 2007 to provide an organized response in opposition to same-sex marriage in state legislatures. NOM serves as a national resource for marriage-related initiatives at the state and local level and it lobbies for and supports marriage initiatives across the nation.
3. NOM raises and spends funds to support traditional marriage and the legal definition of marriage as described in the ballot question scheduled to be voted on by the citizens of Minnesota in the 2012 General Election ("the Minnesota ballot question").
4. As a national organization, NOM educates the public about actions and activities in every state. Through its website and other communications, NOM updates its members, supporters, and the public about current events related to marriage. NOM has provided and will continue to provide such information about Minnesota and the Minnesota ballot question, and about actions in every other state where the legal definition of marriage is at issue.

5. NOM is a national leader supporting the Minnesota ballot question on its website, in its materials, and other public venues. Donors contribute to NOM because of NOM's vocal public support not only of the Minnesota ballot question but similar activities in other states.
6. NOM has registered a political fund in Minnesota.
7. NOM publicly solicits contributions for the general support of the organization. All contributions solicited on its website are for general support and not for a particular purpose or state. NOM provides information and urges support on its website for the Minnesota ballot question, but will not solicit contributions online specifically for the support of the ballot question.

Question 1

Must all donations to NOM of more than \$100 be reported to the Minnesota Campaign Finance Board ("the Board") by virtue of references to the Minnesota ballot question on a separate page of its website, or in materials describing NOM's activities nationwide, even if the donation was not solicited specifically for the Minnesota effort?

Opinion

In your request letter you state that according to guidance provided by the Board, "a contribution [to NOM] of over \$100 is subject to public disclosure in Minnesota if the funds are received in response to a solicitation for general purposes, where there are also references to the Minnesota ballot question campaign as one of several projects and activities in which NOM is involved."

The Board is concerned that this statement suggests a serious misunderstanding of the statutes requiring disclosure and of the Board's guidance related to application of those statutes. To clarify the matter, the Board will review its guidance on the subject.

On October 4, 2011, the Board provided advice on the application of the definition of "contribution" as used in Chapter 10A. "Contributions" from a donor must be itemized on a report filed with the Board if they aggregate more than \$100 in a calendar year from that donor.

In the case of ballot question advocacy, Chapter 10A defines a contribution as money given to an association for the purpose of promoting or defeating a ballot question.

The Board's guidance provides criteria for evaluating when money is, in fact, given for the purpose of promoting or defeating a ballot question. The guidance on the definition of "contribution" states:

1. Money designated for ballot question expenditure purposes

Money received by an association is a contribution if the contributor specified that the money was given to support the association's campaign to promote or defeat the ballot question.

2. Money given in response to a solicitation including an express request

Money given in response to a solicitation that requests money for the express purpose of supporting the association's campaign to promote or defeat the ballot question is a contribution.

An express request is a request that asks for money and states that the money is sought to support the ballot question campaign.

3. Money given in response to a solicitation that is the functional equivalent of an express request

Money given in response to a solicitation that meets the all of the following criteria is a contribution:

- A) The solicitation is made after the date of final enactment by the legislature of the bill placing the subject ballot question on the general election ballot;
- B) The solicitation clearly identifies the subject ballot question; and
- C) The solicitation is susceptible to no reasonable interpretation other than that money given as a result of the solicitation will be used to promote or defeat the subject ballot question.

The assumed facts state that money will not be solicited specifically for the purpose of promoting the Minnesota ballot question. Therefore, paragraph 2 of the guidance is not applicable. It also appears from the facts that the donor will not specify that the donation is to promote the Minnesota ballot question. Therefore, paragraph 1 of the guidance is also not applicable.

With respect to the definition in paragraph 3 of the guidance, condition A is met because the legislature has placed the question on the November, 2012, ballot. Condition B is met because the facts indicate that NOM's website or solicitation materials clearly identifies the ballot question as one of the projects or activities in which NOM is involved.

However, condition C of the guidance states that for the resulting donation to be a "contribution", the solicitation must be "susceptible to no reasonable interpretation other than that money given as a result of the solicitation will be used to promote or defeat the subject ballot question".

Without actual specific text or web pages to examine, the Board's opinion must be somewhat hypothetical. However, the Board has made it clear that when determining whether money given is a "contribution" its guidance is to be applied in favor of excluding transfers where the conditions stated in the guidance are not clearly met.

The assumed facts state that "[a]ll contributions solicited on its website are for general support and not for a particular purpose or state." Further, the assumed facts state that contributions are not solicited online specifically for the purposes of the Minnesota ballot question. Although donors might "assume" that part or all of their donation will be used to promote the Minnesota ballot question, they might also assume that all or part of the donation will be used in other states or for other NOM projects.

The Board concludes that the hypothetical solicitation presented in the assumed facts is subject to reasonable interpretations other than that donations resulting from it will, in fact, be used to promote or defeat a ballot question. Thus, funds received as a result of the hypothetical solicitation would not be "contributions" under Chapter 10A and are not subject to the more-than-\$100 itemization threshold.

This opinion is based on hypothetical facts. If the actual facts differ from the hypothetical facts used in this opinion, a different result could be reached.

Question 2

Is NOM prohibited from spending its general treasury funds to support the Minnesota ballot question unless the funds are first transferred or contributed to its political fund?

Opinion

NOM may spend its general treasury funds to promote or defeat a ballot question, but it must track that spending through a political fund accounting mechanism for subsequent reporting to the Board. Regardless of the accounting mechanism adopted, money used to promote or defeat a ballot question in Minnesota is, by statutory definition, part of NOM's political fund.

It is up to NOM to determine the accounting mechanism that it will use to track money raised or spent to promote or defeat a ballot question. Use of the words "transferred to or contributed to" the political fund do not necessarily describe the nature of the accounting. If NOM maintains its political fund account in a separate checking account, there would be a "transfer" of money to that account. However, if NOM makes expenditures to promote or defeat a ballot question directly from its general treasury account, there will be no transfer, but disclosure requirements would still apply.

It is important to recognize that a political fund is not a separate entity from the association itself. A political fund is simply an accounting and disclosure mechanism that facilitates an association's disclosure of "contributions," expenditures to promote or defeat a ballot question, and under specified conditions, the underlying sources of money used to make those expenditures.

Questions 3 and 4

(3) If NOM were to make expenditures in excess of \$100 from its general treasury funds in support of the Minnesota ballot question, would NOM then be required to publicly report all donors to NOM who contributed over \$100 regardless of the fact that their support for NOM is not or was not designated for the Minnesota ballot question?

(4) If NOM were to make expenditures in excess of \$100 from its general treasury funds in support of the Minnesota ballot question, would NOM then be required to publically disclose all members of NOM whose annual membership fees or dues to NOM were in excess of \$100 during the calendar year?

Opinion

Questions 3 and 4 are the same except that one is based on NOM's receipt of money from "donors" and the other is based on the receipt of money designated as "membership fees or dues."

The Board understands these questions to be related to receipts of money that would not be defined as "contributions" under Chapter 10A. If they are not contributions, the money would constitute general treasury funds. General treasury funds consist of both voluntary donations to the association and money that the association characterizes as membership dues or fees.

Receipts of general treasury funds are not subject to the reporting requirement applicable to "contributions", which requires itemization of any contribution of more than \$100. However, under Minnesota Statutes section 10A.27, subd. 15, if NOM uses \$5,000 or more of its general treasury money for expenditures to promote or defeat a ballot question, it must file a statement of underlying sources with its political fund report.

A statement of underlying sources may result in itemization of donors, but at a \$1,000-or-more threshold rather than at the \$100-or-more threshold applicable to "contributions."

Question 5

If NOM transfers general treasury money to its political fund for the purpose of making expenditures in support of the Minnesota ballot question, what disclosure is required of the underlying source(s) of the funds transferred?

Opinion

Use of the words "transfers" and "transferred" may not accurately reflect the transactions in which an association uses general treasury money to promote or defeat a ballot question. If the association maintains a separate checking account through which to make its ballot question expenditures, an actual transfer will occur. However, an association is not required to maintain a separate depository from which to make its ballot question expenditures. If it does not maintain a separate depository, no actual "transfer" will occur. Rather, the association will simply pay for ballot question expenditures directly from its general treasury checking account. In such a case, an accounting entry will be made to record the use of general treasury money to make ballot question expenditures.

The requirement to disclose underlying sources of general treasury money used to promote or defeat a ballot question does not depend on whether a physical transfer occurs between checking accounts or an accounting entry records the use of general treasury money for the expenditure.

Prior to legislative action in 2010, underlying source disclosure was required under Minnesota Statutes section 10A.12, subd. 5, which requires disclosure of underlying sources if the amount attributable to the source is more than \$100.

In 2010, the legislature enacted statutes applicable to associations that make only independent expenditures. In its statements of guidance, the Board has recognized that these provisions are written broadly enough to permit their use by associations that make only ballot question expenditures. The Board's recognition that this additional group of associations may elect to provide underlying source disclosure under §10A.27, subd. 15, instead of under §10A.12, subd. 5, provides a second option which the Board will accept as meeting the statutory underlying source disclosure requirements. An association proceeding under §10A.27, subd. 15, is not also required to disclose underlying sources under §10A.12, subd. 5.

If an association elects to proceed under the §10A.27, subd. 15, option and has used \$5,000 or more in general treasury funds to promote or defeat a ballot question, the association must disclose underlying sources sufficient to account for the amount of general treasury money used to promote or defeat a ballot question. The disclosure statement must include itemized underlying sources at the \$1,000-or-more threshold, if any, and a total representing the amount attributable to sources for which itemization is not required.

Question 6

How would the "allocation" described in the June 30, 2011 Statement of Guidance apply to NOM for purposes of transfers from NOM's general treasury to its political fund, where NOM has received funds from its website or other activities that reference NOM's active support for the Minnesota ballot question?

Opinion

The question refers to the transfer of money from NOM's general treasury. This opinion is based on the assumption that the money under consideration does not constitute "contributions" under Chapter 10A.

The allocation of general treasury money to underlying sources is described in statute and was recognized in the Board's guidance as being available to associations making expenditures to promote or defeat a ballot question. As discussed in the previous section, NOM's use of the word "transfers" may not be applicable. However, regardless of whether there is an actual transfer, or simply the use of general treasury money to promote or defeat a ballot question, allocation of the general treasury money to underlying sources may be required.

If NOM uses \$5,000 or more in general treasury funds to promote the Minnesota ballot question, underlying source disclosure is required under Minnesota Statutes section §10A.27, subd. 15. The statement of underlying sources may require itemization of some sources, based on how NOM allocates the money used to promote the Minnesota ballot question among its sources of general treasury money.

Section 10A.27, subd. 15, provides two options for determining how an association may allocate general treasury money used to promote or defeat a ballot question to underlying source.

(1) Under one option, NOM may determine on a pro-rated basis, compared to the total membership dues, fees, and/or donations received by NOM during the calendar year, each donor's share of the general treasury money that NOM used to promote the Minnesota ballot question. "Donor" in the context of this requirement means an individual or association that has paid dues or membership fees or made donations to NOM.

If no donor's pro-rated share is \$1,000 or more, then no itemization of underlying sources is required.

If the pro-ration method is used and if there are donors to NOM whose pro-rated share of the general treasury money that NOM used to promote the Minnesota ballot question is \$1,000 or more, NOM must itemize those donors as underlying source(s) of funding for its expenditures to promote the Minnesota ballot question.

(2) Under the second option, NOM may instead choose to allocate its use of general treasury money to promote the Minnesota ballot question to specific donors to NOM. If NOM uses this method, it may select from its donors and allocate to its use of general treasury money all or part of each selected donor's dues, fees, and/or donations paid to NOM.

If a donor's dues, fees, and/or donations paid to NOM during the calendar year and allocated by this method total \$1,000 or more, the donor must be itemized as an underlying source.

Under either method of identifying underlying sources, it is possible that general treasury money used by NOM to promote the Minnesota ballot question will be allocated to sources that do not reach the \$1,000 threshold and, therefore, are not required to be itemized. If that is the case,

NOM must indicate the amount of general treasury money used to promote or defeat a ballot question that is attributed to underlying sources for which itemization is not required.

The Board provides a form which may be used by an association to provide the required underlying source disclosure statement.

The underlying source disclosure statement must be filed with NOM's political fund report that includes the expenditures to promote the Minnesota ballot question for which the allocation was made.

Question 7

What is the "safe harbor" referred to in the Board's guidance? How does the Board's guidance apply to NOM as a national leader vocally supporting marriage initiative efforts across the country, including but not limited to Minnesota, where donors give generally to NOM to enable NOM to continue to support various efforts such as the Minnesota ballot question but do not (necessarily) earmark the funds specifically for Minnesota? Are all donors of \$100 or more to NOM's general program activities subject to disclosure solely because NOM advocates support of the Minnesota ballot question as one of several initiatives in which NOM is engaged? If that is the case, when and how is NOM to know when such donors are subject to disclosure?

Opinion

It is Minnesota Statutes Chapter 10A, not a statement of guidance issued by the Board, that establishes the disclosure requirements for NOM and other associations. The Board's statements of guidance represent the Board's enforcement position with respect to the application of Chapter 10A to ballot question matters.

The phrase "safe harbor" as used with respect to the Board's guidance means that so long as an entity provides disclosure in conformance with the guidance, that association will not be sanctioned by the Board even in the context of a complaint alleging that Chapter 10A requires more disclosure than the guidance requires.

If NOM interprets Chapter 10A as requiring less disclosure than outlined in the guidance, it may follow its own interpretation, which will be subject to review in the course of the Board's compliance activities.

With respect to the disclosure question presented above, only "contributions", as that term is defined in Chapter 10A and applied through the Board's Statement of Guidance (as explained in response to Question 1) are itemized at the more-than-\$100 threshold. All Chapter 10A contributions must be reported on the reports NOM submits for its political fund activity. Contributions of \$100 or less are not itemized.

Donations to NOM's general treasury may be subject to underlying source disclosure if statutory thresholds are met, as discussed in other sections of this opinion.

NOM may determine if money received is a Chapter 10A contribution by reference to the applicable statutes and to the Board's guidance on the subject. If NOM is unable to make a determination based on these resources, it may consult with Board staff or seek an advisory opinion based on the specific facts of the transaction.

Question 8

According to the June 30, 2011 Guidance, if NOM makes a transfer of general treasury funds to its Minnesota registered political fund, NOM is allowed to "allocate" the amount transferred to specific donors to NOM as though those individuals or entities had made contributions designated to the Minnesota ballot question effort, even if they did not do so. In other words, is it a correct understanding of the Guidance that NOM is required by the Board to unilaterally select general donors to NOM and identify them as donors to the Minnesota ballot question without any proof or evidence that the donor intended to contribute specifically to the Minnesota effort? Is this allocation a public filing? If it is not a public filing, is there ever a situation where it would become public?

Opinion

It is not a correct understanding on NOM's part that NOM is "required by the Board" or by the Board's guidance to do anything. All of the disclosure requirements applicable to NOM are required by Chapter 10A of the Minnesota Statutes, which the Board administers.

Question 6 discusses the requirements for providing underlying source disclosure and the methods available for attribution of general treasury money to specific underlying sources.

The method selected for completing the allocation to underlying sources is not disclosed to the Board, nor are the resulting calculations. The disclosure required by the statute consists of the list of names, addresses, and amounts allocated to those underlying sources for which itemization is required and a lump-sum of the amount of the allocation attributed to underlying sources for which itemization is not required.

In the event of a Board investigation of a complaint related to the allocation, it is possible that records of the calculation of the allocation could be requested by the Board. However, it is the Board's intention that in such a case, the association that made the allocation would substitute numbers for the actual names and addresses of the general treasury donors whose donations were part of the allocation. This would prevent the identification of donors whose names are not required to be itemized under §10A.27, subd. 15.

With respect to the final point in your question, it is not possible to state that there is absolutely no possible scenario under which this information would become public.

Issued January 3, 2010

Greg McCullough, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes

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. 28. **Political fund.** "Political fund" means an accumulation of dues or voluntary contributions by an association other than a political committee, principal campaign committee, or party unit, if the accumulation is collected or expended to influence the nomination or election of a candidate or to promote or defeat a ballot question.

...

10A.12 POLITICAL FUNDS.

...

Subd. 5. **Dues or membership fees.** An association may, if not prohibited by other law, deposit in its political fund money derived from dues or membership fees. Under section 10A.20, the treasurer of the fund must disclose the name of any member whose dues, membership fees, and contributions deposited in the political fund together exceed \$100 in a year.

10A.13 ACCOUNTS THAT MUST BE KEPT.

Subdivision 1. **Accounts; penalty.** The treasurer of a political committee, political fund, principal campaign committee, or party unit must keep an account of:

(1) the sum of all contributions, except any donation in-kind valued at \$20 or less, made to the committee, fund, or party unit;

(2) the name and address of each source of a contribution made to the committee, fund, or party unit in excess of \$20, together with the date and amount of each;

...

10A.20 CAMPAIGN REPORTS.

Subdivision 1. **First filing; duration.** The treasurer of a political committee, political fund, principal campaign committee, or party unit must begin to file the reports required by this section in the first year it receives contributions or makes expenditures in excess of \$100 and must continue to file until the committee, fund, or party unit is terminated. The reports must be filed electronically in a standards-based open format specified by the board. For good cause shown, the board must grant exemptions to the requirement that reports be filed electronically.

...

Subd. 3. **Contents of report.** (a) The report must disclose the amount of liquid assets on hand at the beginning of the reporting period.

(b) The report must disclose the name, address, and employer, or occupation if self-employed, of each individual or association that has made one or more contributions to the reporting entity, . . .

10A.27 CONTRIBUTIONS

. . .

Subd. 15. **Contributions of dues or contribution revenue.** (a) An association may, if not prohibited by other law, contribute revenue from membership dues or fees, or from contributions received by the association to an independent expenditure political committee or an independent expenditure political fund without complying with subdivision 13. Before the day when the recipient committee or fund's next report must be filed with the board under section 10A.20, subdivision 2 or 5, an association that has contributed \$5,000 or more in aggregate to independent expenditure political committees or funds during the calendar year must provide in writing to the recipient's treasurer a statement that includes the name, address, and amount attributable to each individual or association that paid the association dues or fees, or made contributions to the association that, in total, aggregate \$1,000 or more of the contribution from the association to the independent expenditure political committee or fund. The statement must also include the total amount of the contribution from individuals or associations not subject to itemization under this section. The statement must be certified as true and correct by an officer of the donor association.

(b) To determine the membership dues or fees, or contributions made by an individual or association that exceed \$1,000 of the contribution made by the donor association to the independent expenditure political committee or fund, the donor association must:

- (1) apply a pro rata calculation to all unrestricted dues, fees, and contributions received by the donor association in the calendar year; or
- (2) as provided in paragraph (c), identify the specific individuals or associations whose dues, fees, or contributions are included in the contribution to the independent expenditure political committee or fund.

(c) Dues, fees, or contributions from an individual or association must be identified in a contribution to an independent expenditure political committee or fund under paragraph (b), clause (2), if:

- (1) the individual or association has specifically authorized the donor association to use the individual's or association's dues, fees, or contributions for this purpose; or
- (2) if the individual's or association's dues, fees, or contributions to the donor association are unrestricted and the donor association designates them as the source of the subject contribution to the independent expenditure political committee or fund. After a portion of an individual's or association's dues, fees, or contributions to the donor association have been designated as the source of a contribution to an independent expenditure political committee or fund, that portion of the individual's or association's dues, fees, or contributions to the donor association may not be designated as the source of any other contribution to an independent expenditure political committee or fund.

(d) For the purposes of this section, "donor association" means the association contributing to an independent expenditure political committee or fund that is required to provide a statement under paragraph (a).

Subd. 16. **Treasurer to submit disclosure statements.** The treasurer of a political committee or political fund receiving a statement required under subdivision 15, must file a copy of the

statement before the deadline for the committee or fund's next report filed with the board under section 10A.20, subdivision 2 or 5, after receiving the statement.

Subd. 17. **Penalty.** (a) An association that makes a contribution under subdivision 15, and fails to provide the required statement within the time specified is subject to a civil penalty of up to four times the amount of the contribution, but not to exceed \$25,000, except when the violation was intentional.

(b) An independent expenditure political committee or an independent expenditure political fund that files a report without including the statement required under subdivision 15, is subject to a civil penalty of up to four times the amount of the contribution for which disclosure was not filed, but not to exceed \$25,000, except when the violation was intentional.

(c) No other penalty provided in law may be imposed for conduct that is subject to a civil penalty under this section.

DRAFT - Not Adopted

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: Disclosure related to ballot question committees

ADVISORY OPINION 422

SUMMARY

Minnesota Statutes Chapter 10A requires certain disclosure when an association accepts contributions or uses its money for expenditures to promote or defeat a ballot question. This opinion describes the statutory requirements under various scenarios presented by the requester.

FACTS

As the representative of an association ("the Association") you ask the Campaign Finance and Public Disclosure Board ("the Board") for an advisory opinion based on the following facts:

1. The Association will engage in educational activities to promote and support the Minnesota ballot question related to the definition of marriage, which is on the ballot in November, 2012 ("the Minnesota ballot question").
2. The Association may create a ballot question political fund to receive contributions and make expenditures in support of the Minnesota ballot question.
3. The Association expects to receive contributions from other associations, including religious organizations such as churches, synagogues, mosques, or similar associations. These associations may be incorporated or unincorporated. They are collectively referred to in this opinion as "religious organizations."

The Association presents a number of questions to clarify how it should inform the leaders of potential organization donors regarding their activities, solicitations, and expenditures in support of the Minnesota ballot question. In addition, the Association wants to understand its obligations regarding the reporting and disclosure of underlying sources of money used to promote the Minnesota ballot question.

Questions 1 and 2

(1) If the Association's ballot question political fund receives a contribution in excess of \$100 but less than \$1,000 from a religious organization, established under Section 501(c)(3) of the Internal Revenue Code or, alternatively, an unincorporated association, is the Association required to obtain and report any additional information regarding the underlying sources of funds contributed to the Association? If so, what is the Association required to obtain and report.

(2) If the Association's ballot question political fund receives a contribution in excess of \$1,000 from a religious organization, established under Section 501(c)(3) of the Internal Revenue Code or, alternatively, an unincorporated association, is the Association required to obtain and report any additional information regarding the underlying sources of funds contributed to the Association? If so, what is the Association required to obtain and report.

Opinion

Based on the wording of the question, the Board assumes that transactions under consideration result from donations of money from religious organizations to the Association specifically for the purpose of promoting the passage of the Minnesota ballot question. As such, these transfers are "contributions" under Minnesota Statutes Chapter 10A and are part of the accumulation of money that constitutes the Association's political fund.

The Internal Revenue Code classification and the presence or absence of a corporate structure do not control disclosure requirements under Chapter 10A. Religious organizations, whether incorporated or not, as well as other associations not registered with the Board are all "unregistered associations" and are subject to the same disclosure requirements, including the requirement to disclose underlying sources of money given to other associations to promote or defeat a ballot question.

When a unregistered association makes a contribution to an association that has a political fund, that contribution is reported on the political fund report as coming from the donor association. In addition, Chapter 10A requires certain additional disclosure from the unregistered association donor.

Prior to 2010, the only provision that permitted an association with a political fund to accept money from a unregistered association was 10A.27, subd. 13. (Section 10A.12, subd. 5, covers the same subject, but is applicable only when an association uses its own general treasury money for political fund purposes.) Section 10A.27, subd. 13, requires that an unregistered association donor that contributes more than \$100 to an association for political fund purposes, must provide specified disclosure with the contribution.

In 2010, the legislature enacted statutes applicable to associations that make only independent expenditures. In its statements of guidance, the Board has recognized that these new provisions are written broadly enough to permit their use by associations that make only ballot question expenditures. The Board's recognition that this additional group of associations may elect to provide underlying source disclosure under §10A.27, subd. 15, instead of under §10A.27, subd. 13, provides a second option which the Board will accept as meeting the statutory underlying source disclosure requirements. An association proceeding under §10A.27, subd. 15, is not also required to disclose under §10A.27, subd. 13.

If the Association elects to provide underlying source disclosure under §10A.27, subd. 15, it will need to ask each religious organization or other unregistered association donor to its political fund account if it has, during the current calendar year, made contributions of \$5,000 or more to all associations engaged in activities to promote the Minnesota ballot question. If the answer to this question is "no", then no underlying source disclosure is required from the contributing religious organization or other unregistered association.

If the religious organization or other unregistered association contributor has made \$5,000 or more in contributions to promote the Minnesota ballot question, it must provide to the Association a statement of underlying sources as specified in Minnesota Statutes section 10A.27, subd. 15. the Association must include this statement with the report on which it discloses the contribution received from the unregistered association.

Question 3

In the scenarios identified in questions 1 and 2, above, what is the donor association required to report to the Campaign Finance Board? What if the donor association's contribution to a ballot question political fund exceeds \$5,000?

Opinion

As explained in response to Question 1, if the donor association's contributions to all ballot question political committees or funds related to the Minnesota ballot question is \$5,000 or more, it must provide a statement of underlying sources to the Association, which will file the statement with its Report of Receipts and Expenditures. Under this scenario, the statement of underlying source disclosure is provided to the Board by the Association. The donor religious organization itself is not required to report anything to the Board.

Question 4

If a religious organization leader speaks at a meeting or service to the members of the organization about the importance of marriage and supporting the Minnesota ballot question, takes an offering at that meeting or service, and then forwards the receipts to the Association for the support of the Minnesota ballot question, what underlying donor disclosure is required from the religious organization and what is the threshold for triggering the disclosure?

Opinion

The answer to this question depends on whether or not the leader of the religious organization informs the members of the religious organization that the proceeds of the collection will be given to the Association to be used to promote the Minnesota ballot question.

The Board first examines the scenario where the religious leader specifically informs religious organization members that the proceeds of the collection will be given to the Association and used to promote the Minnesota ballot question.

Under this scenario, the religious leader's informing members that the collection will be transferred to the Association to be used to promote the Minnesota ballot question results in a solicitation specifically for money to promote the Minnesota ballot question. As a result, the donations made in response to the solicitation are "contributions" as that word is defined in Chapter 10A, which regulates disclosure of money used to promote or defeat a ballot question.

In this scenario, the religious leader would be acting as a fundraiser on behalf of the Association. The contributions from the religious organization's members would be considered to be contributions to the Association and would become part of the Association's political fund.

Because donations received under this scenario constitute "contributions", other requirements of Chapter 10A also apply. Specifically, under §10A.15, subd 2, an association may not accept a contribution from an individual of more than \$20 unless the name and address of the donor is collected and recorded. If the amount of the contribution is more than \$100, the association must also collect, record, and report employment information for the donor under §10A.20, subd. 3(b). Individual contributions of \$20 or less may be accepted without obtaining any information from the donor.

Under the scenario you have proposed, the religious leader should inform religious organization members that if they wish to donate more than \$20, they should do so by means of a check made payable to the Association with their name and address on it or they should provide their name and address by some other means. The religious leader should also inform religious organization members that if they wish to donate more than \$100, the Association will not be able to accept the amount over \$100 unless they also provide employment information. It will be up to the religious leader and the Association to determine the method of obtaining this additional required information.

the Association will report the contributions on its political fund report, itemizing contributions from any donor of more than \$100. The Association will need to aggregate contributions from the same donor in order to determine if itemization is required.

The Board next examines the situation where the funds forwarded to the Association are from the religious organization's general offering taken at a meeting or service. In this case, the religious leader has not informed the religious organization members that the offering will be used for any specific purpose or that it is any different than offerings taken up at other meetings or services.

Under this scenario, the donations from individual religious organization members are not "contributions" to the Association, but are donations to the religious organization. If the religious leader transfers all or part of the collection to the Association, the transfer constitutes a contribution by the religious organization to the Association, which will be accounted for by the Association through its political fund account.

Because the religious organization is not itself an entity registered with the Board, it may be required to provide disclosure of the underlying sources of the money it contributes to the Association. If the total amount that the religious organization contributes to the Association and other associations to promote the Minnesota ballot question in a calendar year is less than \$5,000, no disclosure of underlying sources is required. If \$5,000 or more is contributed, underlying source disclosure as specified in Minnesota Statutes section 10A.27, subd. 15, is required.

Question 5

If a religious leader includes an article in it's a membership bulletin or newsletter about the importance of supporting the Minnesota ballot question and the cost of producing the communication exceeds \$100, is there a reporting or disclosure obligation triggered by the

expenditure by the religious organization? If so, what is the reporting obligation?

Opinion

The facts on which this response is based relate to an article that either expressly advocates for the adoption of the ballot question or is subject to no reasonable interpretation other than as advocacy for adoption of the question. Thus, publishing the article is a communication to promote the Minnesota ballot question. The costs of communications to promote or defeat a ballot question are ballot question expenditures under Chapter 10A.

Although Chapter 10A states that an association that makes more than \$100 in expenditures to promote or defeat a ballot question must do so through a political fund, the Board has determined that it will take no action and impose no penalty for an association that fails to register as long as that association registers once it has raised or spent more than \$5,000 to promote or defeat a ballot question.

If the total cost of communications by the religious organization during a calendar year to promote the Minnesota ballot question exceeds \$5,000, the religious organization will be required to register a political fund account with the Board and to track and disclose its ballot question expenditures using its political fund accounting mechanism.

An association reporting through a political fund account must file periodic disclosure reports as specified in Minnesota Statutes section 10A.20.

Question 6

If an anonymous donor contributes funds to a religious organization, directing the funds to be spent in support of the Minnesota ballot question, may the religious organization forward the funds to the Association for use through its political fund? What is the reporting requirement attendant to such a contribution? May the contribution be received by the Association for its political fund for support of the marriage amendment if it is more than \$100?

Opinion

The religious organization may accept and forward to the Association an anonymous donation to support the Minnesota ballot question if the donation does not exceed \$20. Anonymous contributions of more than \$20 to promote or defeat a ballot question are prohibited by Minnesota Statutes section 10A.15, subd. 1.

Because anonymous donations may not exceed \$20 in amount, they are reported in the total amount of unitemized contributions on the recipient's schedule of contributions received.

Question 7

If a religious leader plans a series of discussions or other religious organization educational events discussing the importance of marriage as the union of one man and woman to the spouses, children, and society from both a religious and secular perspective between now and the November, 2012, general election, but does not specifically urge religious organization members to vote for the Minnesota ballot question, is there any potential that any expenses incurred by the religious organization are subject to reporting as expenditures in support of the Minnesota ballot question?

Opinion

Minnesota Statutes section 10A.01, subd. 9, defines "expenditure" as, among other things, money spent "for the purpose of promoting or defeating a ballot question."

The Board has issued guidance on how associations may decide whether expenditures they make should be treated as "expenditures" or not.

The guidance provides:

An expenditure to promote or defeat a ballot question (a ballot question expenditure) is an expenditure:

- (a) that expressly advocates the adoption or defeat of a ballot question measure, or
- (b) that is susceptible of no reasonable interpretation other than as an appeal to vote for or against a ballot question measure.

Under the facts presented in the question, it is clear that clause (a) above is not applicable. On December 6, 2011, the Board provided further guidance on the application of clause (b). In that guidance, the Board stated:

(i) A communication is presumed to be a communication to promote or defeat a ballot question if it (1) mentions the issue that is the subject of the ballot question; (2) states a position on that issue; and (3) mentions the ballot question that addresses the issue, mentions voting on the issue, or otherwise indicates that people will be able to vote on the issue.

(ii) A communication that discusses an issue that is the subject of a ballot question but does not mention the ballot question that addresses the issue; does not mention voting on the issue; and otherwise does not indicate that people will be able to vote on the issue is presumed to be excluded from the definition of ballot question expenditure under Chapter 10A.

If the scenario presented in this question meets the requirements of clause (b)(ii) above, the religious organization will have the benefit of the presumption that the associated costs are not ballot question expenditures. The religious organization should recognize that this presumption is not absolute. It is possible that the presumption could be rebutted by other facts surrounding the activities of the religious organization.

Question 8

If the religious leader in question 7 does call for the members of the religious organization to vote for the Minnesota ballot question, does the express advocacy trigger reporting or disclosure obligations by the religious organization?

Opinion

This question presents a scenario that falls within paragraph 1 of the guidance quoted in the

response to Question 7 above because it expressly advocates voting for the Minnesota ballot question. Thus, the costs of the activities would be ballot question expenditures, which are subject to disclosure. However, also see the response to Question 5 explaining that the Board will not enforce the registration and disclosure requirements with respect to an association that has not raised or spent more than \$5,000 to promote or defeat a ballot question.

Question 9

If a religious leader gives an address to the members of the religious organization or sponsors an event discussing only the religious organization's religious teaching on marriage, is there a possibility that any expenditures in making such communications are subject to reporting as an expenditure in support of the Minnesota ballot question?

Opinion

See the answer to Questions 7 and 8, which are also applicable to this question.

Question 10

Does the Board's "safe harbor" mean that those donor associations or ballot question political funds that make a good faith effort to comply with the Board's guidance and identify the underlying source funds of contributions are automatically immune from a complaint and investigatory or prosecutorial actions by the Board or the Attorney General?

Opinion

Some of the Board's guidance uses the phrase "safe harbor" to reflect the fact that if associations operate within the bounds of the guidance, it will be the Board's position that they are in compliance with the provisions of Chapter 10A. The guidance describes approaches to the application of Chapter 10A with respect to important definitions, such as the definitions of "contributions" and "expenditures." Associations may rely on the guidance for the proposition that the Board in its compliance activities will not apply definitions or requirements broader than those described in the guidance.

The requirements of Chapter 10A, however, are not satisfied merely by an association's good faith effort to comply. If an association is uncertain of a recordkeeping or disclosure obligation, the association should seek assistance from Board staff or request an advisory opinion based on specific facts.

The Board cannot address how the Office of the Attorney General would approach application of the Board's guidance.

Issued January 3, 2012

Greg McCullough, Chair
Campaign Finance and Public Disclosure Board/

Relevant Statutes

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. 28. **Political fund.** "Political fund" means an accumulation of dues or voluntary contributions by an association other than a political committee, principal campaign committee, or party unit, if the accumulation is collected or expended to influence the nomination or election of a candidate or to promote or defeat a ballot question.

...

10A.13 ACCOUNTS THAT MUST BE KEPT.

Subdivision 1. **Accounts; penalty.** The treasurer of a political committee, political fund, principal campaign committee, or party unit must keep an account of:

(1) the sum of all contributions, except any donation in-kind valued at \$20 or less, made to the committee, fund, or party unit;

(2) the name and address of each source of a contribution made to the committee, fund, or party unit in excess of \$20, together with the date and amount of each;

...

10A.20 CAMPAIGN REPORTS.

Subdivision 1. **First filing; duration.** The treasurer of a political committee, political fund, principal campaign committee, or party unit must begin to file the reports required by this section in the first year it receives contributions or makes expenditures in excess of \$100 and must continue to file until the committee, fund, or party unit is terminated. The reports must be filed electronically in a standards-based open format specified by the board. For good cause shown, the board must grant exemptions to the requirement that reports be filed electronically.

...

Subd. 3. **Contents of report.** (a) The report must disclose the amount of liquid assets on hand at the beginning of the reporting period.

(b) The report must disclose the name, address, and employer, or occupation if self-employed, of each individual or association that has made one or more contributions to the reporting entity,

...

10A.27 CONTRIBUTIONS

...

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 \$100 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. This subdivision does not apply when a national political party contributes money to its affiliate in this state.

(b) An unregistered association may provide the written statement required by this subdivision to no more than three committees, funds, or party units in a calendar year. Each statement must cover at least the 30 days immediately preceding and including the date on which the contribution was made. An unregistered association or an officer of it is subject to a civil penalty imposed by the board of up to \$1,000, if the association or its officer:

(1) fails to provide a written statement as required by this subdivision; or

(2) fails to register after giving the written statement required by this subdivision to more than three committees, funds, or party units in a calendar year.

(c) The treasurer of a political committee, political fund, principal campaign committee, or party unit who accepts a contribution in excess of \$100 from an unregistered association without the required written disclosure statement is subject to a civil penalty up to four times the amount in excess of \$100.

Subd. 14. Contributions of business revenue. An association may, if not prohibited by other law, contribute revenue from the operation of a business to an independent expenditure political committee or an independent expenditure political fund without complying with subdivision 13.

Subd. 15. Contributions of dues or contribution revenue. (a) An association may, if not prohibited by other law, contribute revenue from membership dues or fees, or from contributions received by the association to an independent expenditure political committee or an independent expenditure political fund without complying with subdivision 13. Before the day when the recipient committee or fund's next report must be filed with the board under section 10A.20, subdivision 2 or 5, an association that has contributed \$5,000 or more in aggregate to independent expenditure political committees or funds during the calendar year must provide in writing to the recipient's treasurer a statement that includes the name, address, and amount attributable to each individual or association that paid the association dues or fees, or made contributions to the association that, in total, aggregate \$1,000 or more of the contribution from the association to the independent expenditure political committee or fund. The statement must also include the total amount of the contribution from individuals or associations not subject to itemization under this section. The statement must be certified as true and correct by an officer of the donor association.

(b) To determine the membership dues or fees, or contributions made by an individual or association that exceed \$1,000 of the contribution made by the donor association to the independent expenditure political committee or fund, the donor association must:

(1) apply a pro rata calculation to all unrestricted dues, fees, and contributions received by the donor association in the calendar year; or

(2) as provided in paragraph (c), identify the specific individuals or associations whose dues, fees, or contributions are included in the contribution to the independent expenditure political committee or fund.

(c) Dues, fees, or contributions from an individual or association must be identified

in a contribution to an independent expenditure political committee or fund under paragraph (b), clause (2), if:

(1) the individual or association has specifically authorized the donor association to use the individual's or association's dues, fees, or contributions for this purpose; or

(2) if the individual's or association's dues, fees, or contributions to the donor association are unrestricted and the donor association designates them as the source of the subject contribution to the independent expenditure political committee or fund. After a portion of an individual's or association's dues, fees, or contributions to the donor association have been designated as the source of a contribution to an independent expenditure political committee or fund, that portion of the individual's or association's dues, fees, or contributions to the donor association may not be designated as the source of any other contribution to an independent expenditure political committee or fund.

(d) For the purposes of this section, "donor association" means the association contributing to an independent expenditure political committee or fund that is required to provide a statement under paragraph (a).

Subd. 16. Treasurer to submit disclosure statements. The treasurer of a political committee or political fund receiving a statement required under subdivision 15, must file a copy of the statement before the deadline for the committee or fund's next report filed with the board under section 10A.20, subdivision 2 or 5, after receiving the statement.

Subd. 17. Penalty. (a) An association that makes a contribution under subdivision 15, and fails to provide the required statement within the time specified is subject to a civil penalty of up to four times the amount of the contribution, but not to exceed \$25,000, except when the violation was intentional.

(b) An independent expenditure political committee or an independent expenditure political fund that files a report without including the statement required under subdivision 15, is subject to a civil penalty of up to four times the amount of the contribution for which disclosure was not filed, but not to exceed \$25,000, except when the violation was intentional.

(c) No other penalty provided in law may be imposed for conduct that is subject to a civil penalty under this section.