

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

.....
**October 4, 2017
Room 225
Minnesota Judicial Center**
.....

MINUTES

The meeting was called to order by Chair Rosen.

Members present: Flynn, Haugen, Leppik, Moilanen, Rosen, Swanson

Others present: Sigurdson, Goldsmith, Pope, staff; Christie Eller, counsel

MINUTES (July 31, 2017)

After discussion, the following motion was made:

Member Leppik's motion: To approve the July 31, 2017, minutes as drafted.

Vote on motion: Unanimously passed (Haugen abstained).

CHAIR'S REPORT

A. Meeting schedule

The next Board meeting is scheduled for 10 a.m. on Wednesday, November 1, 2017.

Before moving to the next agenda item, Chair Rosen welcomed Member Haugen to the Board.

B. Report of nomination committee – vice chair for remainder of 2017, officers for 2018

Chair Rosen reported that the nomination committee, consisting of himself and Member Swanson had met. Member Swanson said that the committee recommended that Member Flynn be named vice chair for the remainder of 2017 and that for 2018, Member Flynn be named chair and Member Leppik be named vice chair.

After discussion, the following motions were made:

Member Swanson's motion: To approve the nomination committee's recommendation that Member Flynn be named as vice chair for the remainder of 2017.

Vote on motion: Unanimously passed.

Member Swanson's motion: To approve the nomination committee's recommendation that for 2018, Member Flynn be named as chair and Member Leppik be named as vice chair.

Vote on motion: Unanimously passed.

EXECUTIVE DIRECTOR REPORT

Mr. Sigurdson presented members with a memorandum regarding this matter that is attached to and made a part of these minutes. Mr. Sigurdson told members that he had responded to a letter from the mayor of the City of Columbus that had also been sent to every legislator. The mayor's letter stated that the level of financial disclosure required of watershed management organization members was unreasonable and asked for statutory changes in this area. Mr. Sigurdson said in addition to addressing the mayor's concerns, he had addressed questions from legislators prompted by the letter.

Mr. Sigurdson next informed members that the Department of Administration had approved the reclassification of the vacant programs assistant position to a professional position and that the new position had been posted. Mr. Sigurdson said that the new position would be responsible for on-line training efforts, keeping the content of the new website up-to-date, and administration of the economic interest program.

ADMINISTRATIVE RULES UPDATE

Mr. Sigurdson and Ms. Pope presented members with a memorandum regarding this matter that is attached to and made a part of these minutes. Mr. Sigurdson reviewed the history of the rulemaking process and the recent legislative hearing held on the proposed rules.

Nick Harper, civic engagement manager of the League of Women Voters, then addressed the Board. Mr. Harper stated that the League supported the proposed rules and urged the Board to pursue their adoption.

George Beck, chair of Minnesota Citizens for Clean Elections, also addressed the Board. Mr. Beck said that his organization supported the proposed rules. Mr. Beck stated that the proposed rules fill gaps in the statutes and help regulated parties to avoid violations. Mr. Beck provided a written memorandum to members that is attached to and made a part of these minutes.

Mr. Sigurdson then reviewed the proposed disclaimer and non-expenditure rules dated 9/22/2017, which are attached to and made a part of these minutes.

After discussion, the following motions were made:

Member Leppik's motion: To amend proposed part 4503.1900 by (1) deleting the phrase "in opposition to a candidate" from the title of subpart 1 and the first sentence of this subpart; (2) deleting the phrase "in opposition to . . . (insert candidate name)"

from the required disclaimer language in subpart 1; (3) deleting subpart 2; and (4) deleting subpart 3.

Vote on motion: Unanimously passed.

Member Leppik's motion: To approve the proposed disclaimer and non-expenditure rules dated 9/22/2017, as amended.

Vote on motion: Unanimously passed.

Mr. Sigurdson then reviewed the proposed expenditure rules dated 9/22/2017, which are attached to and made a part of these minutes.

After discussion, the following motion was made:

Member Flynn's motion: To approve the proposed expenditure rules dated 9/22/2017, as drafted.

Vote on motion: Unanimously passed.

Mr. Sigurdson then reviewed the proposed coordination rules dated 9/22/2017, which are attached to and made a part of these minutes.

After discussion, the following motions were made:

Member Rosen's motion: To amend proposed part 4503.2000, subpart 10, by adding the word "intimate" before the word "interpersonal."

Vote on motion: Unanimously passed.

Member Swanson's motion: To amend proposed part 4503.2000, subpart 11, item A, by adding the phrase "of the spender" to the end of the first sentence in item A and after "general treasury money" in subitem 2.

Vote on motion: Unanimously passed.

Member Moilanen's motion: To approve the proposed coordination rules dated 9/22/2017, as amended.

Vote on motion: Unanimously passed.

Member Rosen's motion: To amend the proposed resolution authorizing publication of a notice of intent to adopt rules as follows:

2. If there are fewer than 25 outstanding hearing requests, the executive director of the Campaign Finance and Public Disclosure Board is authorized ~~to sign the Order Adopting the Rules and to do anything else needed to adopt these rules without a hearing~~ submit these rules to the Office of Administrative Hearings for final review.
3. If there are 25 or more outstanding hearing requests, the executive director of the Campaign Finance and Public Disclosure Board is authorized to act as the Board's representative at the hearing and ~~to do anything else needed to adopt these rules with a hearing. This includes authority to sign the Order Adopting Rules if there are no modifications to the rules other than modifications approved by the Board~~ submit these rules to the Office of Administrative Hearings for final review.
4. The proposed rules cannot become effective without further action by the Board.

Vote on motion: Unanimously passed.

Member Moilanen's motion: To adopt the following resolution:

1. The executive director of the Campaign Finance and Public Disclosure Board is authorized to sign and to give the Notice of the Board's Intent to Adopt Rules using Alternate Notices of whether a hearing will be held in the proposed rule drafts dated 9/22/2017, identified as Minnesota Rules, chapters 4501 through 4525, with any modifications approved by the Board at its October 4, 2017, meeting. The executive director must give this notice to all persons who have registered their names with the Board for that purpose. The executive director must also publish the notice in the State Register. Furthermore, the executive director is authorized to do anything else needed to complete this notice including modifying the proposed rules as needed to obtain the approval of the revisor of statutes, the governor's office, and the office of administrative hearings.
2. If there are fewer than 25 outstanding hearing requests, the executive director of the Campaign Finance and Public Disclosure Board is authorized to do anything else needed to submit these rules to the Office of Administrative Hearings for final review.
3. If there are 25 or more outstanding hearing requests, the executive director of the Campaign Finance and Public Disclosure Board is authorized to act as the Board's representative at the hearing and to do anything else needed to submit these rules to the Office of Administrative Hearings for final review.
4. The proposed rules cannot become effective without further action by the Board.

Vote on motion: Unanimously passed.

ENFORCEMENT REPORT

The matters on the enforcement report were postponed until the next meeting.

ADVISORY OPINION REQUEST 444

Mr. Sigurdson presented members with a memorandum regarding this matter that is attached to and made a part of these minutes. Mr. Sigurdson told members that the requester had not consented to making the request public. Therefore a public version of the draft opinion had been prepared that did not identify the requester.

Mr. Sigurdson said that the advisory opinion concerned whether a wind project siting proceeding before the Public Utilities Commission (PUC) is an administrative action that subjects an individual attempting to influence the PUC in that matter to the lobbyist registration requirements in Chapter 10A. Mr. Sigurdson said that in a 2012 enforcement action, the Board had decided that a wind project siting proceeding was an administrative action under Chapter 10A. Mr. Sigurdson stated that the proposed advisory opinion examined the decision in the enforcement action and also concluded that a wind project siting proceeding is an administrative action under Chapter 10A. Consequently, individuals attempting to influence that action are subject to the lobbyist registration and reporting requirements in Chapter 10A.

After discussion, the following motions were made:

Member Swanson's motion: To amend the proposed advisory opinion by deleting the first sentence in the last paragraph.

Vote on motion: Unanimously passed.

Member Swanson's motion: To approve the proposed advisory opinion as amended.

Vote on motion: Unanimously passed.

LEGISLATIVE RECOMMENDATIONS

Mr. Sigurdson presented members with a memorandum regarding this matter that is attached to and made a part of these minutes.

After discussion, the following motion was made:

Member Flynn's motion: To direct staff to develop a list of possible subjects for legislative proposals for the November meeting.

Vote on motion: Unanimously passed.

LEGAL COUNSEL'S REPORT

Ms. Eller had nothing to add to the legal report that is attached to and made a part of these minutes.

OTHER BUSINESS

There was no other business to report.

EXECUTIVE SESSION

The Chair recessed the regular session of the meeting and called to order the executive session. Upon recess of the executive session, the regular session of the meeting was called back to order and the Chair had nothing to report into regular session.

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

Respectfully submitted,



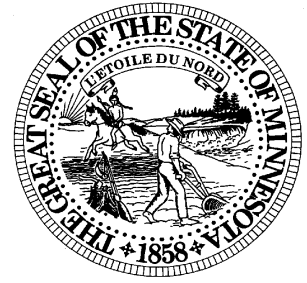
Jeff Sigurdson
Executive Director

Attachments:

Memorandum regarding executive director's report
Memorandum regarding administrative rules
Proposed disclaimer and non-expenditure rules dated 9/22/2017
Proposed expenditure rules dated 9/22/2017
Proposed coordination rules dated 9/22/2017
Memorandum from George Beck, Minnesota Citizens for Clean Elections
Memorandum regarding advisory opinion request 444
Draft advisory opinion 444 – public version
Memorandum regarding legislative recommendations
Legal report

Minnesota

Campaign Finance and Public Disclosure Board



Date: September 27, 2017

To: Board Members

From: Jeff Sigurdson, Executive Director

Telephone: 651-539-1189

Re: Executive Director's Report – Board Operations

Correspondence

On September 15, 2017, I received the attached letter and resolution from David Povolny, Mayor of the City of Columbus. In his letter, Mayor Povolny states that the economic interest statement disclosure required of a public official who serves on a watershed management organization is unreasonable. The resolution calls for a change in state statute to reduce the disclosure required. The City of Columbus sent the letter and resolution to all members of the legislature.

I have addressed questions from legislators regarding Mayor Povolny's letter, and have sent the attached reply to Mayor Povolny.

Personnel

The Department of Administration has approved the reclassification of the program assistant position that became vacant earlier this year. The position is now a professional classification that will be responsible for the day-to-day management of the Board's economic interest disclosure program.

Additionally, the position will produce and maintain the Board's web-based training material and educational videos for all programs. The position will also support the Board's name standardization initiative; including the use of standardized names in web-based applications. Finally, the position will help move legacy data to the new website, and generally help keep the Board's website accurate and up-to-date.

The position is scheduled to be posted on the state's job listing website on October 2, 2017.

Attachments

Letter from Mayor Povolny, Resolution from the City of Columbus

Letter from Jeff Sigurdson to Mayor Povolny

Although Members Moilanen and Leppik have dedicated a lot of time and energy in working with staff on developing the proposed language, the Board is actually not very far into the process of adopting rules. The attached chart on the administrative rule process shows the various steps. At this point, the Board has only published and concluded a request for comments. Assuming that the Board wishes to move forward on administrative rules, the Board will need to adopt the attached resolution giving the executive director the authority to take the steps necessary to publish the notice of intent to adopt rules.

Before the notice and draft rules actually can be published, however, staff must prepare a statement of need and reasonableness (SONAR), the Revisor of Statutes must approve the form of the draft rules, the Governor's office must sign off on the proceeding, and the Office of Administrative Hearings must approve a notice plan. These steps are estimated to take a minimum of six weeks.

Attachments

Public comments on proposed rules

Legislative hearing on proposed rules:

http://www.house.leg.state.mn.us/cmte/archiveAV/cmtearchives.aspx?comm=90011&ls_year=90

Letter from Senator Kiffmeyer and Representative O'Driscoll, dated August 31, 2017

Chart on rulemaking process

Proposed disclaimer and non-expenditure rules 9-22-2017

Proposed expenditure and noncampaign disbursement rules 9-22-2017

Proposed coordination rules 9-22-2017

Draft resolution authorizing publication of notice of intent to adopt rules

9/22/2017

Draft disclaimer and non-expenditure provisions

4501.0100 DEFINITIONS

[For text of subparts 1 – 3, see M.R.]

Supb. 3a. **Campaign material.** “Campaign material” has the meaning given this term in Minnesota Statutes section 211B.01, subdivision 2.

[For text of subparts 4-9, see M.R.]

4501.0500 FILINGS, SUBMISSIONS, AND DISCLOSURES.

[For text of subpart 1, see M.R.]

Supb. 1a. Completion of filing. A filing with the board is complete upon:

A. receipt in the board office of the document being filed, bearing the original signature of the person responsible for filing the document;

B. receipt of a facsimile transmission of the document, subject to ~~subpart 2~~ Minnesota Statutes section 10A.025, subdivision 1a;

C. the postmark date of a first class or certified mailing of the document being filed, properly addressed to the board at its current address; or

D. the successful submission of an electronic file to the board.

[For text of subparts 3-4, see M.R.]

4501.0200 SECURITIES.

Subpart 1. **Items which are securities.** For purposes of Minnesota Statutes chapter 10A and Minnesota Rules chapters 4501 through 4525, securities include any stock, share, bond, warrant, option, pledge, note, mortgage, annuity, debenture, lease, or commercial paper, in any corporation, partnership, mutual fund, trust, or other association.

Subp. 2. **Items which are not securities.** For purposes of Minnesota Statutes chapter 10A and Minnesota Rules chapters 4501 through 4525, securities do not include deposits in a savings account, certificates of deposit, money market certificates, treasury bills, bonds or notes, dividends from securities, shares in a mutual fund or exchange traded fund, or holdings in a defined benefit pension or retirement plan.

Subp. 3. **Holder of securities.** A "holder of securities" is an individual having an ownership interest in a security, or who is the trustee or beneficiary of a trust having an ownership in a security. An individual owning shares in a mutual fund does not have an ownership interest in underlying securities owned by the fund. An individual owning an annuity does not have an ownership interest in underlying securities owned by the annuity.

Subp. 4. **Valuation of securities.** The value of a security is its fair market value. For securities traded on national exchanges, the fair market value is the closing bid price for the

Commented [PJ(1): This definition is needed for the disclaimer section below.

Commented [PJ(2): This provision is necessary to correct a reference to a rule part that was moved to statute during the last legislative session.

Commented [PJ(3): This amendment is intended to remove mutual and exchange traded funds from the list of securities that must be disclosed on statements of economic interest and to add annuities to that list. Mutual and exchange traded funds are being removed because those funds typically are too large to be affected by one official's actions. Annuities are being added because those investments are regulated by the state and therefore could create potential conflicts of interest for some officials.

Commented [PJ(4): There has been much confusion about whether "retirement plan" includes 401(k)s or other IRAs. Consequently, language has been added specifying that only defined benefit pension plans are excluded from the definition of securities. Defined benefit plans are excluded because beneficiaries of those plans do not have control over the investments held by the. Beneficiaries of 401(k) and other IRA plans, however, can direct the investments held by those plans.

Commented [PJ(5): This amendment has been added because it is the fact that the official owns an annuity that could create a potential conflict of interest, not the underlying securities owned by the annuity. Thus, there is minimal value in requiring disclosure of those underlying securities.

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security on a given date. The value of a partial interest in a security is the value of the holder's proportionate share.

Subp. 5. **Exception for charitable trusts.** Trustees of associations organized for charitable, philanthropic, religious, social service, educational, or other public use or purpose are not holders of securities owned by the associations.

Subp. 6. **Exception for blind trusts.** When a trust is organized to prevent the beneficiary from having any knowledge of the assets held by the trust, the beneficiary of the trust is not required to report the underlying securities owned by the trust.

Commented [PJ(6): This provision ensures that beneficiaries of blind trusts are not required to report trust assets of which they are supposed to have no knowledge.

4503.0500 CONTRIBUTIONS

[For text of subpart 1, see M.R.]

Subp. 2. **Time of receipt of contributions.**

Commented [PJ(7): These amendments are intended to clarify when contributions made through electronic means are received.

A. A monetary contribution not made through electronic means is received by a political committee or political fund, for reporting and contribution limit purposes, when the instrument conveying the contribution, such as cash, check, or money order, is physically received by the treasurer, the candidate, or a committee or fund worker.

B. A contribution delivered through the United States mail is received on the date the mail is gathered from the delivery point by the treasurer, the candidate, or a committee or fund worker.

C. A monetary contribution made through electronic means is received for purposes of the registration requirements in section 10A.14; the reporting requirements in section 10A.20; the sessional contribution prohibition in section 10A.273; and the affidavit of contributions requirement in section 10A.323, on the date that the contributor makes the contribution to the contribution processor.

Commented [SJ(8): This section provides that for the various reporting deadlines and cutoff requirements of chapter 10A, the date the electronic contribution was made is used.

D. A monetary contribution made through electronic means is received for purposes of the deposit requirements in section 10A.15, subdivision 3, on the date that the treasurer, the candidate, or a committee or fund worker has access to the funds under the terms of the agreement with the contribution processor.

Commented [SJ(9): This section provides that the deposit deadline is set when the electronic contribution may be downloaded to the committee account.

[For text of subparts 3 – 9, see M.R.]

Subp. 10. **Electronic contribution processors.** An organization that provides contribution processing and delivery services, when acting in the ordinary course of business by collecting and disbursing contributions to a committee or fund that was designated by the contributor, is not required to register under Minnesota Statutes section 10A.14 or report under Minnesota Statutes section 10A.20.

Commented [PJ(10): This provision enacts portions of Advisory Opinions 319, 369, and 434 into rule.

4503.1300 GOVERNOR AND LIEUTENANT GOVERNOR.

[For text of subparts 1-3, see M.R.]

Subp. 4. **Contribution limits for governor and lieutenant governor before and after merger of separate committees.** Prior to the merger of separate principal campaign committees for governor and lieutenant governor, each committee may accept contributions up

Commented [PJ(11): This amendment is necessary to correct a reference to a rule part that was moved into statute during the last legislative session.

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to the limits set forth in Minnesota Statutes, section 10A.27, subdivision 1, clause (a), for governor and lieutenant governor running together. After the merger of the committees, contributions to either committee from a single source must be aggregated in determining whether the contribution limit for the joint committee has been reached or exceeded. If the limit has been exceeded, contributions must be returned in accordance with ~~subpart 5~~ Minnesota Statutes section 10A.27, subdivision 16a.

[For text of subparts 5-6, see M.R.]

4503.1400 PUBLIC SUBSIDY AGREEMENTS.

[For text of subparts 1-3, see M.R.]

Subp. 3a. Effect on contributions to independent expenditure committees and funds. By signing a public subsidy agreement, a candidate agrees that the provision in Minnesota Statutes section 10A.25, subdivision 3a, prohibiting a candidate's principal campaign committee from making independent expenditures also prohibits a candidate's principal campaign committee from making contributions to independent expenditure political committees or funds.

Commented [PJ(12): This provision enacts Advisory Opinion 412 into rule.

Subp. 10. Special elections held under Minnesota Statutes section 204B.13, subdivision 2, paragraph (c). The filing deadlines below apply to a special election held under Minnesota Statutes section 204B.13, subdivision 2, paragraph (c), for which there is no filing period:

Commented [PJ(13): This provision specifies how to administer the deadlines for the public subsidy program when a special election is called to fill a vacancy in nomination under section 204B.13, subdivision 1, paragraph (c). These special elections do not have filing periods like typical special elections. Instead, the political party with the vacancy in nomination has until 7 days after the general election to submit the name of the party's candidate. This subpart uses the deadlines applicable to typical special elections (1 day after the filing period closes for the agreement; five days after the filing period closes for the affidavit) and ties them to the deadline for submitting the name of the party's new candidate (7 days after the general election).

- A. The candidate must sign and submit the public subsidy agreement to the board not later than eight calendar days after the general election.
- B. The candidate must submit the affidavit of contributions not later than 12 calendar days after the general election.

4503.1900 DISCLAIMERS

Subpart 1. Written independent expenditures in opposition to a candidate. A written independent expenditure in opposition to a candidate that uses the language below in the communication satisfies the disclaimer requirements in Minnesota Statutes section 10A.17, subdivision 4, and Minnesota Statutes section 211B.04:

Although the rule says "calendar days," the provision in Minn. R. 4501.0500, subpart 3, stating that when a filing date falls on a weekend or holiday, the filing date moves to the next business day would still be applicable.

This is an independent expenditure in opposition to(insert candidate name) prepared and paid for by (insert name of entity participating in the expenditure),(insert address). It is not coordinated with or approved by any candidate nor is any candidate responsible for it.

Commented [PJ(14): This section specifies language that would satisfy both the disclaimer requirement for independent expenditures and the disclaimer requirement for campaign material. It also specifies language that would satisfy the statutory disclaimer requirements in other common situations not explicitly discussed in those statutes, such as when two entities jointly produce a communication.

Subp. 2. Written independent expenditures in support of a candidate. A written independent expenditure in support of a candidate that uses the language below in the communication satisfies the disclaimer requirements in Minnesota Statutes section 10A.17, subdivision 4, and Minnesota Statutes section 211B.04:

Commented [PJ(15): Subparts 1 through 4 specify language for written communications.

This is an independent expenditure in support of(insert candidate name) prepared and paid for by(insert name of entity participating in the expenditure),(insert address). It is not coordinated with or approved by any candidate nor is any candidate responsible for it.

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Subp. 3. Written independent expenditures that name more than one candidate supported or more than one candidate opposed. When a written independent expenditure names more than one candidate supported or names more than one candidate opposed, the disclaimer must

- A. include the names of each candidate supported or opposed by the communication;
- or
- B. use the phrase “the candidates named” in place of the list described in item A.

Subp. 4. Written independent expenditures without cost. If a written independent expenditure is produced and disseminated without cost, the words “and paid for” may be omitted from the disclaimer.

Subp. 5. Independent expenditures; broadcast media. A. An independent expenditure disseminated through broadcast media that uses the language below in the communication satisfies the disclaimer requirements in Minnesota Statutes section 10A.17, subdivision 4, and Minnesota Statutes section 211B.04:

Commented [PJ16]: This subpart establishes the language for disclaimers on broadcast communications.

This independent expenditure is paid for by (insert name of entity participating in the expenditure). It is not coordinated with or approved by any candidate nor is any candidate responsible for it.

B. An independent expenditure produced and broadcast without cost that uses the language below in the communication satisfies the disclaimer requirements in Minnesota Statutes section 10A.17, subdivision 4, and Minnesota Statutes section 211B.04:

..... (insert name of entity participating in the expenditure) is responsible for the contents of this independent expenditure. It is not coordinated with or approved by any candidate nor is any candidate responsible for it.

Subp. 6. Independent expenditures; more than one participant. When more than one entity participates in making an independent expenditure that requires a disclaimer under Minnesota Statutes section 10A.17, subdivision 4, the name of every participating entity must be included in the disclaimer. In written communications, the address of each entity must be listed after the entity's name.

Subp. 7. Campaign material; more than one participant. When more than one entity participates in the preparation or dissemination of campaign material that requires a disclaimer, under Minnesota Statutes section 211B.04, paragraph (a), the name of every participating entity must be included in the disclaimer. In written communications, the address of each entity must be listed after the entity's name.

Subp. 8. Disclaimer requirements; services for a constituent. Communications prepared as services for a constituent under Minnesota Statutes section 10A.01, subdivision 26, paragraph (6), must include the disclaimer required by Minnesota Statutes section 211B.04 when the communications are disseminated after adjournment sine die of the legislature in the election year for the office held.

Commented [PJ17]: This provision clarifies confusion about whether a disclaimer is necessary on constituent services communications distributed during the time when those communications must be reported as campaign expenditures.

Subp. 9. Disclaimer requirements; type sizes. A disclaimer in a written communication satisfies the requirement in Minnesota Statutes section 10A.17, subdivision 4, that an independent expenditure disclaimer be in conspicuous type and the requirement in Minnesota

Commented [PJ18]: The rules do not set font sizes for all communications because there was no way to craft requirements that fit all written communications. Instead, this provision creates safe harbors for two types of commonly-used communications.

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Statutes section 211B.04 that campaign material prominently include a disclaimer when the disclaimer meets the following type size requirements:

- A. For written communications other than an outdoor sign, website, or social media page, the disclaimer is printed in at least 8 point type.
- B. For written communications on a website or social media page, the disclaimer is printed in the same point type as the majority of the text in the body of the website or social media page.

Subp. 10. **Disclaimer requirements; homepages of websites and social media pages.** The disclaimer requirements in Minnesota Statutes section 10A.17, subdivision 4, and Minnesota Statutes section 211B.04 are satisfied for an entire website or social media page when the required disclaimer appears once on the homepage of the site.

4525.0330 SUBMISSION TO BOARD; MATTERS UNDER STAFF REVIEW RESOLVED BY CONCILIATION AGREEMENT.

Subpart 1. **Matter under staff review resolved by conciliation agreement.** A matter under staff review that is resolved by conciliation agreement under part 4525.0320 must be presented to the board for approval at a meeting closed to the public under part 4525.0200, subpart 5.

The respondent must be given an opportunity to be heard by the board prior to the board's decision regarding the agreement.

The executive director must send notice of the meeting to the respondent. The notice must be sent not later than the time that the agreement is provided to the board and must include a copy of the agreement. The notice must include the date of the meeting at which the board will consider the matter and a statement that the respondent has the opportunity to be heard by the board before the board's determination regarding the agreement.

A conciliation agreement made under part 4525.0320 to resolve a matter under staff review is final only after the board approves the agreement.

If the board does not approve a conciliation agreement to resolve a matter under staff review, the board must lay the matter over until its next meeting and:

- A. provide guidance and direct the executive director to continue the staff review; or
- B. direct the executive director to prepare the matter for resolution by the board without an agreement pursuant to part 4525.0340.

If an agreement proposed under this subpart is not approved by the board, any admissions by the respondent and any remedial steps taken or agreed to by the respondent are not evidence of a violation in any subsequent proceeding.

Subp. 2. **Matter under staff review resolved; no violation.** The executive director must close a matter under staff review when the staff review establishes that no violation of the campaign finance laws has occurred. The executive director must report the closure of the

Commented [PJ(19): The amendments to parts 4525.0330 and 4525.0340 make it possible for staff reviews to be resolved immediately through closure or the prompt issuance of findings. Currently, even staff reviews where no violation is found must be presented to the Board for resolution, which delays the resolution of the matter for at least five weeks.

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matter to the board at a meeting closed to the public under part 4525.0200, subpart 5, and must send notice of the closure to the respondent.

Subp. 3. **Matter under staff review; violation not requiring formal investigation.** A matter under staff review that is resolved without a formal investigation under part 4525.0340 must be submitted to the board for approval at a meeting closed to the public under part 4525.0200, subpart 5.

The respondent must be given an opportunity to be heard by the board prior to the board's decision regarding the staff review.

The executive director must send notice of the meeting to the respondent. The notice must be sent not later than the time when the written document resolving the matter is provided to the board and must include a copy of the written document resolving the matter. The notice must include the date of the meeting at which the board will consider the matter and a statement that the respondent has the opportunity to be heard by the board before the board's determination regarding the resolution of the staff review.

A written document concluding a matter under staff review without a formal investigation is final only after the board approves the document.

If the board does not approve the written document resolving a matter under staff review without a formal investigation, the board must:

- A. provide guidance and direct the executive director to continue the staff review;
- B. initiate a formal investigation of the matter; or
- C. direct the executive director to prepare the matter for resolution by the board pursuant to part 4525.0340.

If a written document resolving a staff review without a formal investigation under this subpart is not approved by the board, any admissions by the respondent and any remedial steps taken or agreed to by the respondent are not evidence of a violation in any subsequent proceeding.

4525.0340 SUBMISSION TO BOARD; BOARD-INITIATED INVESTIGATIONS AND NOT RESOLVED BY CONCILIATION AGREEMENT.

Subpart 1. **Submission to board.** The executive director must submit the following matters to the board for decision under this part:

- A. a matter under staff review that is not resolved by ~~conciliation agreement~~ under parts 4525.0320 and 4525.0330; and
- B. any other matter that the board is to consider for the authorization of a formal investigation, other than a matter arising from a filed complaint.

The submission must be in writing, must describe the potential violation involved, and must include any supporting information. The submission must explain the actions undertaken

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in any summary proceedings and any points of disagreement preventing resolution of the matter.

The respondent must be given an opportunity to be heard by the board prior to the board's decision regarding the submission.

The executive director must send notice of the submission to the respondent. The notice must be sent not later than the time that the submission is provided to the board and must include a copy of the submission. The notice must include the date of the meeting at which the board will consider the matter, and a statement that the respondent has the opportunity to be heard by the board before the board's determination regarding the submission.

[For text of subparts 2-3, see M.R.]

DRAFT

Expenditure and noncampaign disbursement provisions

4503.0850 EXPENDITURES AND NONCAMPAIGN DISBURSEMENTS; GENERAL PROVISIONS

Subpart. 1. Reimbursements. A. When a committee reimburses an individual or association for an expenditure or a noncampaign disbursement, the reimbursement is not required to be itemized on a report of receipts and expenditures unless the total reimbursements and payments made by the committee during the year to that individual or association exceed \$200.

Commented [PJ(1)]: This provision is intended to clarify confusion about whether the \$200 threshold for itemizing expenditures on reports applies to the total amount paid during the year to the person being reimbursed or to the total amount paid during the year to the vendor of the goods or services for which reimbursement was made. The subpart specifies that itemization is required when the payments to the person being reimbursed exceed \$200.

B. When a committee reimburses an individual or association for an expenditure or noncampaign disbursement that requires itemization on a report of receipts and expenditures and chooses under Minnesota Statutes section 10A.20, subdivision 13, to report the expenditure or noncampaign disbursement as a reimbursement to a third party, the committee must disclose the information below on the report.

Commented [PJ(2)]: This provision is intended to clarify what information must be included when a committee reports a reimbursement.

1. The name and address of the individual or association to which reimbursement was made;
2. The name and address of the vendor supplying the good or service for which reimbursement was made;
3. The date of the expenditure or noncampaign disbursement for which reimbursement was made;
4. The date of the reimbursement;
5. A description of the specific good or service purchased; and
6. If the reimbursement was for a noncampaign disbursement, the specific noncampaign disbursement category in Minnesota Statutes section 10A.01, subdivision 26, or this chapter that is applicable to the good or service for which reimbursement was made.

Subp. 2. Allocating ongoing expenses. When an ongoing expense has both a campaign purpose and a purpose listed as a noncampaign disbursement in Minnesota Statutes section 10A.01, subdivision 26, or this chapter, the committee must allocate the cost of the expense between the two purposes according to the proportion of actual use for each purpose.

Commented [PJ(3)]: This subpart is intended to clarify confusion regarding how to report expenses that have both a campaign and a noncampaign component.

Subp. 3. Cellular telephone plans. When a candidate's committee pays for the candidate's cellular telephone plan, the committee must pay only for the cellular telephone use attributable to the candidate. To determine the use attributable to the candidate, the committee must

Commented [PJ(4)]: This subpart is intended to help committees avoid conversion of committee funds to personal use in the area of cell phone plans. The subpart requires committees that pay for cell phone service for candidates to purchase single-user plans for the candidate or to use one of the listed methods to determine how much of a multi-user plan is attributable to the candidate.

- A. purchase a single-user plan that covers only the candidate's telephone and data usage;
or
- B. purchase a multi-user plan and pay only the candidate's share of the monthly cost.

To determine the candidate's share of the monthly cost of a multi-user plan, the committee must use one of the following methods:

- A. Track the data, text, and telephone calls used each month by each user on the plan to determine the portion of the plan cost that should be allocated to the candidate's telephone for that month and add that amount to the line cost for the candidate's telephone; or
- B. Divide the total monthly cost of the plan by the number of users covered by the plan.

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Subp. 4. Mileage. The recordkeeping requirements in Minnesota Statutes sections 10A.025, subdivision 3, and 10A.13, subdivision 2, are satisfied for mileage expenses paid by a committee when the committee obtains a mileage log that shows the information listed below:

Commented [PJ(5)]: This subpart is intended to clarify what information must be kept to support the payment of mileage expenses. It follows the requirements of Minnesota Statutes section 10A.155.

- A. The date of each trip taken;
- B. The purpose of each trip taken;
- C. The distance traveled during the trip; and
- D. If the mileage is not being paid at the lowest rate used by the state to reimburse its employees for automobile use, the actual cost of fuel, maintenance, repairs, and insurance directly related to the use of the automobile.

Subp. 5. Purpose of expenditure or noncampaign disbursement. When an expenditure or noncampaign disbursement must be itemized on a report of receipts and expenditures under Minnesota Statutes section 10A.20, subdivision 3, the report must establish the purpose of the expenditure or noncampaign disbursement by explaining how the specific good or service purchased was used.

Commented [PJ(6)]: This subpart is intended to clarify confusion about what must be included on a report to establish the purpose of an expenditure as required by Minnesota Statutes section 10A.20, subdivision 3.

4503.0900 NONCAMPAIGN DISBURSEMENTS.

Subpart 1. **Additional definitions.** In addition to those listed in Minnesota Statutes, section 10A.01, subdivision 26, the following expenses are noncampaign disbursements:

- A. transportation, meals, and lodging paid to attend a campaign school;
- B. costs of campaigning incurred by a person with a disability, as defined in Minnesota Statutes, section 363A.03, subdivision 12, and which are made necessary by the disability;
- C. the cost to an incumbent or a winning candidate of providing services to residents in the district after the general election in an election year for the office held;
- D. payment of advances of credit in a year after the year in which the advance was reported as an expenditure;
- E. payment of fines assessed by the board; ~~and~~
- F. costs of running a transition office for a winning gubernatorial candidate during the first six months after election;

G. a contribution to a fund established to support a candidate's participation in a recount of ballots affecting that candidate's election;

Commented [PJ(7)]: Items G, H, I, and J codify Advisory Opinions 415, 424, and 433.

H. costs paid by a candidate's principal campaign committee for a single reception given in honor of the candidate's retirement from public office after the filing period for affidavits of candidacy for that office has closed;

I. a donation from a terminating principal campaign committee to the state general fund;
and
J. a donation from a terminating principal campaign committee to a county obligated to

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incur special election expenses due to that candidate's resignation from state office.

Subp. 2. [Repealed, 21 SR 1779]

[For text of subpart 3, see M.R.]

Subp. 4. **Services for a constituent.** A. A candidate's committee may claim the expenses listed below as services for a constituent during the periods listed in Minnesota Statutes section 10A.01, subdivision 26, paragraph (6).

1. The cost of a charter bus to transport constituents to an educational day held at the state capitol during a legislative session;
2. The cost of hiring an intern that is directly attributable to the intern's provision of services for constituents;
3. The cost of congratulatory letters sent to the office holder's constituents that include information about government services available to the recipient or how the recipient can register to vote; and
4. The cost of printing and distributing a review of legislative action and issues to the office holder's constituents if the distribution occurs prior to the sine die adjournment of the legislature.

If the review of legislative action described in subitem 4 is distributed after the legislature adjourns sine die, the printing and distribution costs must be prorated between noncampaign disbursements and campaign expenditures as described in Minnesota Statutes section 10A.01, subdivision 26, paragraph (6), even if the printing occurred prior to adjournment.

B. A candidate's committee may not claim the expenses listed below as services for a constituent under Minnesota Statutes section 10A.01, subdivision 26, paragraph (6).

1. The cost of food or beverages consumed by a constituent during a meeting with the office holder; and
2. The cost of a communication to constituents that advocates for the re-election of the office holder, solicits campaign contributions to the candidate or a political party, or advocates for or against the election of candidates of a political party.

Subp. 5. **Food and beverages while campaigning.** A candidate's committee may not claim the expenses listed below as payments for food and beverages consumed by a candidate or volunteers while they are engaged in campaign activities under Minnesota Statutes section 10A.01, subdivision 26, paragraph (7).

A. The cost of food and beverages consumed by the candidate or volunteers when the candidate or volunteers are distributing communications that qualify as a service to a constituent under Minnesota Statutes section 10A.01, subdivision 26, paragraph (6); and

B. The cost of food and beverages consumed by the candidate and volunteers when the candidate and volunteers are campaigning outside of the candidate's district.

Subp. 6. **Food and beverages; legislative duties.** A candidate's committee may not claim the expense of food and beverages consumed by individuals other than the legislator at a reception or meeting as a noncampaign disbursement under Minnesota Statutes section 10A.01, subdivision 26, paragraph (8).

Commented [PJ(8): Subparts 4 through 7 are intended to clarify confusion about which expenses may be claimed, and may not be claimed, under the different noncampaign disbursement categories.

Subpart 4 codifies Advisory Opinions 248, 307, and 378 and enforcement decisions issued by the Board.

Commented [PJ(9): Subparts 5 and 6 codify enforcement decisions issued by the Board.

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Subp. 7. Expenses for serving in public office. A. A candidate's committee may claim the expenses listed below as expenses for serving in public office under Minnesota Statutes section 10A.01, subdivision 26, paragraph (10).

1. The cost of transportation, lodging, meals, and other expenses necessary to attend meetings and conferences when the reason that the candidate attends the event is to assist the candidate in performing the duties of the office held and the candidate would not attend the event if the candidate were not an office holder;
2. The cost of traveling to the state capitol for scheduled legislative committee meetings and regular and special legislative sessions when those costs are not reimbursed by another source;

B. A candidate's committee may not claim the expenses listed below as expenses for serving in public office under Minnesota Statutes section 10A.01, subdivision 26, paragraph (10).

1. The cost of meals for staff;
2. The cost of membership fees and dues necessary to belong to organizations located in the office holder's district;
3. Costs incurred for transportation, lodging, and other expenses for trips taken outside of the office holder's district for the purpose of relationship building; or
4. Costs incurred for transportation, lodging, and other expenses by an individual accompanying an office holder on a trip unless the office holder is a person with a disability, as defined in Minnesota Statutes, section 363A.03, subdivision 12, and the accompanying individual is providing services that are made necessary by the disability.

C. Item B, subitem 4, does not require a committee to allocate a travel expense between an office holder and an individual accompanying the office holder on a trip when the presence of the accompanying individual does not increase the amount of the expense.

Commented [PJ(10)]: This subpart codifies portions of Advisory Opinions 255, 277, 329,346, and 354 and enforcement decisions issued by the Board.

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Proposed coordination rules

4503.2000 COORDINATED EXPENDITURES.

Subp. 1. Candidate. For purposes of this part, “candidate” means a candidate as defined in Minnesota Statutes section 10A.01, subdivision 10; the candidate’s principal campaign committee; or the candidate’s agent.

Subp. 2. Election segment. For purposes of this part, “election segment” means:

- A. For a regular election, the period from January 1 of the year prior to an election year through December 31 of the election year.
- B. For a special election, the entire special election cycle.

Subp. 3. Election cycle. For purposes of this part, “election cycle” has the meaning given this term in Minnesota Statutes section 10A.01, subdivision 16.

Subp. 4. Coordinated. For purposes of this part, “coordinated” means with the authorization or expressed or implied consent of, or in cooperation or in concert with, or at the request or suggestion of the candidate. A coordinated expenditure is an approved expenditure under Minnesota Statutes section 10A.01, subdivision 4.

Commented [PJ(1): The list of actions that constitute coordination quotes the list of actions in the statutory definition of approved expenditure. The rules create the new term “coordination” instead of using the phrase “approved expenditure” because the term “coordination” is more commonly used and understood than the phrase “approved expenditure.”

Subp. 5. Spender. The definitions in Minnesota Statutes section 10A.01 apply to the terms used in this subpart. For purposes of this part, “spender” means any of the following:

- A. An individual;
- B. An association;
- C. A political committee;
- D. A political fund;
- E. An independent expenditure political committee;
- F. An independent expenditure political fund; or
- G. A party unit.

Subp. 6. Agent. For purposes of this part, “agent” means a person who served during the election segment as the candidate’s chairperson, deputy chairperson, treasurer, deputy treasurer, fundraiser, advisor, or business representative, or any other person authorized to act on the candidate’s behalf.

Commented [PJ(2): This definition codifies the agent provisions of Advisory Opinions 338 and 410 and enforcement decisions issued by the Board.

Subp. 7. Consultant. For purposes of this part, “consultant” means a person or an association that provides consulting services.

Subp. 8. Consulting services. For purposes of this part, “consulting services” means polling, communications planning and design, advertising, messaging, and any other service that involves campaign strategy. “Consulting services” does not mean printing or mailing campaign material, legal services that do not involve campaign strategy, accounting services, or costs for the use of a medium for communications purposes.

Subp. 9. General treasury money. For purposes of this part, “general treasury money” has the meaning given this term in Minnesota Statutes section 10A.01, subdivision 17c.

Subp. 10. Domestic partner. For purposes of this part, “domestic partner” means an individual who shares an interpersonal relationship with the candidate and resides in the same residence as the candidate but is not married to the candidate.

Subp. 11. Coordinated expenditures. An expenditure listed below, when expressly advocating for the election of the candidate or the defeat of the candidate’s opponent, is a coordinated expenditure that is not independent under Minnesota Statutes section 10A.01, subdivision 18:

- A. An expenditure made during an election segment by a spender for which the candidate, during that same election segment, has engaged in fundraising of money that is not general treasury money.
 - 1. Fundraising includes:
 - a. Soliciting, collecting, or directing money that is not general treasury money for or to the spender;
 - b. Providing names of potential donors of money that is not general treasury money to the spender; and
 - c. Appearing as a speaker at an event raising money that is not general treasury money for the spender.
 - 2. This item applies to fundraising for money that is not general treasury money by an individual prior to the individual meeting the definition of a candidate in Minnesota Statutes section 10A.01, subdivision 10.
 - 3. This item does not apply to a candidate’s fundraising on behalf of a party unit.

Commented [PJ(3): This provision codifies Advisory Opinions 412 and 437.

- B. An expenditure that reproduces or disseminates, in whole or in part, campaign material designed, produced, paid for, or distributed by the candidate.
 - 1. This item does not apply to:
 - a. Campaign material incorporated into a communication that advocates the defeat of the candidate who prepared the material;
 - b. Campaign material used in a news story or editorial; or
 - c. The reproduction or dissemination of a candidate’s campaign materials if the reproduction or dissemination costs \$20 or less.

Commented [PJ(4): This provision was intended to provide guidance on the use of publically available material originally produced by the candidate in an independent expenditure. The Board’s enforcement action in this area is not consistent with the rule being considered.

As the rulemaking progressed, it became clear that it would be difficult to draw the line between use of a candidate’s material that constituted coordination and use that did not. This difficulty led to the realization that the issue was not appropriate for rulemaking primarily intended to codify existing advisory opinions and longstanding practices. The provision therefore was removed from the proposed rules.

B. An expenditure made during an election segment for consulting services from a consultant that has also provided consulting services to the candidate or the candidate’s opponent during that same election segment.

Commented [PJ(5): This provision codifies Advisory Opinion 400 and parts of Advisory Opinion 410.

- 1. This item does not apply when the following conditions are met:
 - a. The consultant assigns separate personnel to the spender and the candidate;
 - b. The consultant has a written policy that describes the measures that the consultant has taken to prohibit the flow of information between the personnel providing services to the spender and the personnel providing services to the candidate;

- c. The written policy has been distributed to all personnel and clients covered by the policy including the candidate and the spender;
- d. The consultant has implemented the measures described in the written policy; and
- e. No information has been shared between the spender and the personnel providing services to the spender and the candidate and the personnel providing services to the candidate.

C. An expenditure made during an election cycle by a spender that:

- 1. Is not a party unit; and
- 2. Was established, directed, or managed during the same election cycle by any of the following:
 - a. The candidate;
 - b. An individual who meets the definition of a candidate under Minn. Stat. section 10A.01, subd. 10, during the same election cycle; or
 - c. The candidate's spouse or domestic partner.
- 3. This item does not apply to the spouse or domestic partner of the candidate's agent.

D. An expenditure made after the spender receives from the candidate information that is not publically available regarding the candidate's campaign plans, strategy, or needs.

E. An expenditure made when:

- 1. The spender provides information to the candidate regarding the expenditure's contents, intended audience, timing, location or mode, volume, or frequency; and
- 2. The information is provided to the candidate before the expenditure is communicated to the public.

F. An expenditure made with the candidate's participation in the following:

- 1. Any of the processes required for the creation and development of the expenditure, including budgeting decisions, media design, acquisition of graphics and text, production, and distribution of the final product; or
- 2. Any decision regarding the content, timing, location, intended audience, volume of distribution, or frequency of the expenditure.

G. An expenditure made during an election cycle that was independent under Minnesota Statutes section 10A.01, subdivision 18, when made that is later used in whole or in part during the same election cycle by a candidate as campaign material.

This item does not apply if the candidate pays the spender for the fair market value of the design or development costs expended to create the campaign material used by the candidate.

Commented [PJ(6): This provision codifies the provisions in Advisory Opinion 410, which discussed relationships and actions that can defeat the independence of an expenditure.

The candidate's spouse or domestic partner was included in this provision on the grounds that the candidate and the spouse/domestic partner share the same home and have a close relationship. It therefore is unrealistic to believe that the spouse/partner has no knowledge of the candidate's campaign. Because the same cannot be said with the same degree of certainty of a candidate's other family members, they were not included in the provision. This is the only provision that includes the candidate's spouse/partner. The provisions in items A, B, D, E, and F do not apply to the candidate's spouse/partner.

Commented [PJ(7): Because the definition of "candidate" includes the candidate, the candidate's campaign committee, and the candidate's agent, the reference to the candidate's spouse in paragraph c technically would include the spouse of the candidate's agent. Subitem 3 therefore is included to specify that the provision does not apply to the spouse of a candidate's agent.

Commented [PJ(8): Items D and E codify some of the provisions in Advisory Opinion 410, which discussed relationships and actions that can defeat the independence of an expenditure.

Commented [PJ(9): This provision codifies enforcement decisions issued by the Board.

Commented [PJ(10): This provision was intended to prevent candidates from using all or part of an independent expenditure in their own campaign material. As the rulemaking progressed, it became apparent that this provision could turn a truly independent expenditure by a corporation into a contribution to a candidate through no fault of the corporation. Given the significant civil penalties and potential criminal consequences for corporate contributions, the committee decided to remove this provision from the current rulemaking and further study the issue.

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Subp. 12. Non-coordinated expenditures. An action listed below, by itself, does not establish that an expenditure made by the spender was coordinated with the candidate:

- A. A candidate asks a spender not to make any expenditure to support the candidate or oppose the candidate's opponent.
- B. An expenditure uses a photograph obtained from a publicly available source or public event.
- C. An expenditure uses information obtained from a biography, position paper, press release, or similar material about the candidate from a publicly available source or public event.
- D. The spender contributes to the candidate or endorses the candidate.
- E. An expenditure includes a hyperlink to the candidate's website or social media page.
- F. An expenditure appears in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication.
- G. The spender discusses the candidate's position on a legislative or policy matter with the candidate. This item includes the sending, completion, and return of a survey conducted by the spender to determine whether to endorse the candidate.
- H. The spender invites the candidate to appear before the spender's members, employees, or shareholders including the candidate's participation in the event, unless the event promotes the election of the candidate or the defeat of the candidate's opponent, or the candidate requests or accepts campaign contributions at the event.

Commented [PJ(11)]: These provisions are intended to provide safe harbors for candidates and independent spenders by specifying some actions that, by themselves, are not coordinated.

To: Minnesota Campaign Finance and Public Disclosure Board

From: George Beck – Chair – Minnesota Citizens for Clean Elections

Re: Coordination rules

Mr. Chair, members, the Minnesota Citizens for Clean elections strongly supports the non-partisan coordination rules that you have been considering. They are also supported by Common Cause Minnesota and the Minnesota League of Women Voters.

True independence between candidates and independent committees was assumed by the Citizens United Court. The rules would promote that.

The rules are classic rulemaking that fill in the gaps in a statute where the regulated need guidance. They do not extend the statute.

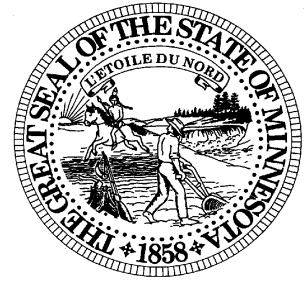
The legislative offer to consider legislation must be considered with the Chair's statement that no rules are needed because the statutes are adequate.

The Campaign Finance Board is responsible to the people of the State of Minnesota rather than the legislature, which it must regulate.

Please initiate rulemaking on these rules and hear from the public on whether they are needed and reasonable.

Minnesota

*Campaign Finance and
Public Disclosure Board*



Date: September 27, 2017

To: Board members

From: Jeff Sigurdson, Executive Director

Telephone: 651-539-1189

Re: Advisory Opinion 444 – wind project siting proceedings before the Public Utilities Commission

The question posed in Advisory Opinion 444 is whether a wind project siting proceeding before the Public Utilities Commission (PUC) is an administrative action that subjects an individual attempting to influence the PUC in that matter to the lobbyist registration requirements in Chapter 10A. The requester has not consented to make the request public. Therefore, both a public version of the opinion that does not identify the requester and a nonpublic version that will be provided only to the requester have been drafted.

The Board resolved the issue presented by the requester in a 2012 enforcement action that is attached below. In the enforcement decision, the Board began its analysis with the Chapter 10A definition of administrative action. Under that definition, administrative actions include “cases of rate setting, power plant and powerline siting, and granting of certificates of need under section 216B.243.” The Board then examined the statutory framework governing power plant and powerline sitings and determined that wind project siting proceedings are power plant siting proceedings. The Board therefore concluded that wind project siting proceedings are included in the Chapter 10A definition of administrative action and that individuals attempting to influence wind project siting proceedings before the PUC are subject to the lobbyist registration requirements.

The draft advisory opinion adopts the reasoning in the enforcement decision and similarly holds that wind project siting proceedings are power plant siting proceedings included in the Chapter 10A definition of administrative action. The draft opinion provides that individuals attempting to influence the PUC in wind project siting proceedings are subject to the lobbyist registration requirements in Chapter 10A.

Attachments:

Draft advisory opinion 444 – nonpublic

Draft advisory opinion 444 - public

Request

Complaint of Ward regarding Daniel Schleck, the Coalition for Sensible Siting, Carol Overland, and Goodhue Wind Truth

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

THIS ADVISORY OPINION IS PUBLIC DATA

**THE FOLLOWING PUBLICATION DOES NOT IDENTIFY
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)**

**RE: Lobbyist registration for wind project siting proceedings before the Public
Utilities Commission**

ADVISORY OPINION 444

SUMMARY

Wind project siting proceedings before the Public Utilities Commission are administrative actions that subject individuals attempting to influence the Commission on those matters to the lobbyist registration requirements in Chapter 10A.

FACTS

You request an advisory opinion from the Campaign Finance and Public Disclosure Board based on the following facts that were provided in the letter requesting the advisory opinion and in discussions with Board staff.

1. You are an individual who represents clients in wind project siting proceedings before the Public Utilities Commission (PUC).
2. Your representation of these clients involves attempting to influence the wind project siting decisions made by the PUC.

ISSUE

Is a wind project siting proceeding before the Public Utilities Commission an administrative action that subjects an individual attempting to influence that action to the lobbyist registration requirements in Chapter 10A?

OPINION

An individual is subject to the lobbyist registration requirements in Chapter 10A if the individual attempts to influence legislative action, the actions of a metropolitan governmental unit, or administrative action.

"Administrative action" means an action by any official, board, commission or agency of the executive branch to adopt, amend, or repeal a rule under chapter 14. "Administrative action" does not include the application or administration of an adopted rule, except in cases of

rate setting, power plant and powerline siting, and granting of certificates of need under section 216B.243.

Minn. Stat. §10A.02, subd. 2.

In a 2012 enforcement decision, the Board addressed the issue of whether a wind project siting proceeding before the Public Utilities Commission (PUC) is a power plant siting, and thus is an administrative action under the above-cited statute.¹ In its decision, the Board examined the statutory framework that governs power plant and wind project siting proceedings before the PUC. The Board first noted, as does the requester, that Minnesota Statutes Chapter 216E governs power plant siting, while wind project site permits are initiated under Minnesota Statutes Chapter 216F. The Board concluded, however, that because Chapter 216F provides that significant portions of Chapter 216E are applicable to wind project siting proceedings, wind project siting proceedings are power plant siting proceedings. The Board therefore determined that wind project siting proceedings are administrative actions under Minnesota Statutes section 10A.02, subdivision 2.

In its analysis, the Board found it significant that the legislature used a specific statutory section to limit the types of certificates of need covered by the administrative action definition, but did not include a similar limit in the power plant and powerline siting clause. The Board therefore found no basis to believe that the legislature intended to exclude any type of power plant and powerline siting from the definition of administrative action.

In the enforcement decision, the Board noted the high level of public interest in the siting of the wind project in question and recognized that such interest is common to the development of any large energy facility. The Board stated that excluding a site permit for a wind project facility from the definition of administrative action based solely on the source of energy used by the facility would unfairly deny the public disclosure on the associations and money spent trying to influence the PUC in those actions.

The Board concludes that the reasoning in the 2012 enforcement decision still is valid and adopts that reasoning for this opinion. Because a wind project siting proceeding is a power plant siting proceeding, a wind project siting proceeding is an administrative action under Minnesota Statutes section 10A.02, subdivision 2. A person who attempts to influence the PUC regarding a wind project siting proceeding therefore is subject to the lobbyist registration requirements in Chapter 10A.

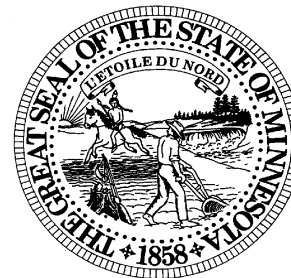
Issued: October 4, 2017

Daniel N. Rosen, Chair
Campaign Finance and Public Disclosure Board

¹ In the Matter of the Complaint of Ward regarding Daniel Schleck, the Coalition for Sensible Siting, Carol Overland, and Goodhue Wind Truth (April 3, 2012)

Minnesota

*Campaign Finance and
Public Disclosure Board*



Date: September 27, 2017

To: Board Members

From: Jeff Sigurdson, Executive Director

Telephone: 651-539-1189

Re: Legislative Recommendations

Minnesota Statutes section 10A.02, subdivision 8, provides in part that the Board...”may indicate apparent abuses and offer legislative recommendations.” At my request, the Board did not have a package of legislative recommendations during the 2017 legislative session. I believe that during a budget year, particularly when there has been a change in party control of the legislature, both legislators and Board staff have little time available for non-budgetary legislative proposals.

Entering a non-budgetary session, legislative attention should be easier to obtain if the Board wishes to provide legislative recommendations. During a non-budgetary session Board staff also has more time to explain and support Board recommendations to the legislature. In short, if there is member interest in providing Board recommendations to the legislature, the upcoming legislative session is the opportunity to do so.

If there is member interest in providing legislative recommendations, staff will develop a list of subjects for consideration. For example, Board members on the administrative rule committee noted several areas where disclosure in the economic interest program needed improvement, but the needed changes would clearly require legislative action.

I would like to receive Board direction as to whether staff should develop a list of possible subjects for legislative proposals for the November meeting.

**CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD
October, 2017**

ACTIVE FILES

Candidate/Treasurer/ Lobbyist	Committee/Agency	Report Missing/ Violation	Late Fee/ Civil Penalty	Referred to AGO	Date S&C Served by Mail	Default Hearing Date	Date Judgment Entered	Case Status
David Berglund	Cook Soil and Water Conservation District	Unfiled Economic Interest Statement due January 25, 2016 Untimely Filing of 2015 Economic Interest Statement Untimely Filing 2011 Economic Interest Statement	\$100 LF \$1,000 CP \$80 LF \$100 LF \$100 CP	7/7/16	12/30/16 8/18/17			Summary Judgment Hearing scheduled for 12/11/17
Roxana Bruins	Roxana Bruins for Senate	Unfiled 2016 Year- End Report of Receipts and Expenditures	\$1,000 LF \$1,000 CP	7/28/17	9/6/17			
Brenden Ellingboe	Ellingboe (Brenden) for House	Unfiled 2015 Year- End Report of Receipts and Expenditures	\$1,000 LF \$1,000 CP	11/29/16	5/26/17			Personal service in MN was unsuccessful. Attempting personal service in OR

Candidate/Treasurer/ Lobbyist	Committee/Agency	Report Missing/ Violation	Late Fee/ Civil Penalty	Referred to AGO	Date S&C Served by Mail	Default Hearing Date	Date Judgment Entered	Case Status
Kirsten Johnson		Unfiled Economic Interest Statement due June 14, 2016	\$100 LF \$1,000 CP	1/17/17	5/26/17			Summons and Complaint were personally served on 9/19/17
Tim Johnson		Unfiled Economic Interest Statement due June 14, 2016	\$100 LF \$1,000 CP	1/17/17	5/26/17			Summons and Complaint were personally served on 9/11/17
Christopher John Meyer	Meyer for Minnesota	2016 Year-End Report of Receipts and Expenditures	\$1,000 LF \$1,000 CP	7/28/17	9/6/17			

CLOSED FILES

Candidate/Treasurer/ Lobbyist	Committee/Agency	Report Missing/ Violation	Late Fee/ Civil Penalty	Referred to AGO	Date S&C Served by Mail	Default Hearing Date	Date Judgment Entered	Case Status
Meg Litts	Meg Litts for House 9A	2016 Pre-General Election Report of Receipt and Expenditures	\$1,000 CP	3/14/17	6/12/17			Closed
		2016 Year-End Report of Receipt and Expenditures	\$1,000 LF \$1,000CP	3/14/17				