

9/22/2017

## 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
  - e. 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.