

Presented to the Board at the November 10, 2016, and January 4, 2017, meetings

Controversial changes

Clarifying conduct, actions, or relationships that prevent an expenditure from being independent and related topics

George Beck petitioned the Board to adopt rules clarifying what conduct, actions, and relationships would prevent an expenditure from being independent. Other potential topics for rulemaking in the independent expenditure area include republication of communications, fundraising, common consultants, former staff, and agents of the candidate. These topics all would be controversial.

Here are examples of specific issues that have arisen in this area:

- Can a candidate and a committee making independent expenditures use the same vendor to prepare their communications? See Advisory Opinion 400 (discussing circumstances under which consultants may provide services to both candidates and IE committees).
- When a candidate fundraises for a committee, can any expenditures made by the committee on that candidate's behalf ever be independent? See Advisory Opinion 412 (determining that candidate committee may not contribute to IE committee or fund when candidate has signed public subsidy agreement); Advisory Opinion 437 (discussing consequences when candidate fundraises for IE committee).
- Under what circumstances does posting pictures or videos on a candidate's public website constitute cooperation or implied consent to expenditures that later use those pictures or videos? See Complaint of the Republican Party of Minnesota Regarding the Minnesota DFL Party and the Mark Dayton for a Better Minnesota Committee (finding no violation when DFL used short part of campaign video published by Dayton committee on YouTube in independent expenditure, but warning that different fact situation involving more of video or entire video may have resulted in different finding).
- Under what circumstances does a candidate's cooperation with the production of photographs or other media defeat the independence of expenditures that include the photographs or other media? See Findings in the Matter of the Investigation of Expenditures Made by the DFL Senate Caucus (finding that communications and interactions between senate caucus and candidates and candidate's assistance in arranging and completing photo shoots constituted cooperation that defeated independence of any material using photographs).
- What relationships make a person an agent of a candidate? See Advisory Opinions 296 and 338 (discussing agent relationships); Complaint Regarding the Tim Pawlenty for Governor Committee and the Republican Party of Minnesota (finding Pawlenty committee responsible for actions of staff that were not authorized by candidate).
- Are there actions that do not prevent expenditures from being independent? See Advisory Opinion 410 (discussing 19 different questions regarding communications that could affect the independence of subsequent expenditures).

Noncampaign disbursements

There probably are some provisions regarding this topic to which no one would object. For example, the Board has recognized two noncampaign disbursement categories in advisory opinions that could be enacted into rule. See Advisory Opinion 415 (contributions to recount fund); Advisory Opinion 424 (cost of retirement reception for retiring legislator). Others,

however, would be controversial. To ensure that any regulations adopted are comprehensive, all provisions related to noncampaign disbursements should be included in the controversial list.

Candidates frequently seek guidance from staff about whether an expense should be classified as a noncampaign disbursement or a campaign expenditure. An expense that does not fit into these two categories, or that is not a charitable contribution of \$100 or less, is an improper use of committee funds. Many of the questions concern the noncampaign disbursement categories for the expenses of serving in office, food and beverage expenses, and technology expenses. The Hoppe and Atkins committee findings also demonstrate the need to provide standards for the use of committee funds for noncampaign disbursements.

The following is a list of areas where additional rule language would help committees use their funds for permitted uses and properly report those expenditures.

- Provide that a cell phone plan paid for as a noncampaign disbursement or a campaign expenditure must be a single user plan and may not be a part of a family plan;
- Clarify that membership fees and dues for local organizations may be campaign expenditures but not costs of serving in office;
- Clarify when mileage reimbursements qualify as campaign expenditures, noncampaign disbursements, or personal expenses;
- Clarify when a committee may pay for the cost of meals as a campaign expenditure or a noncampaign disbursement; and
- Provide that the purchase of computers, printers, and similar items are always campaign expenditures. See Advisory Opinions 211 and 228 (stating that computer purchases are always campaign expenditures).

Potentially controversial changes

Clarify disclaimer requirements and exemptions for independent expenditure and attribution disclaimers

Chapters 10A and 211B regulate disclaimers on campaign material and independent expenditures. These statutes contain terms and provisions which would benefit from clarification in administrative rule.

Here are examples of issues that have arisen regarding this topic that could be resolved through administrative rulemaking.

- What is the minimum type size necessary for an independent expenditure disclaimer to be “conspicuous” as required by Minnesota Statutes section 10A.17, subdivision 4, and for a campaign material disclaimer to be “prominent” as required by Minnesota Statutes section 211B.04? Do conspicuous and prominent mean the same thing?
- Because an independent expenditure communication must include both the independent expenditure disclaimer and the campaign material disclaimer, is there language that can be used that satisfies the requirements of both statutes?
- What should the form of the disclaimer be when more than one entity is participating in preparing, disseminating, and/or paying for a communication?
- Clarify the requirement, if any, for the use of a disclaimer on material that may be reported as a noncampaign disbursement.

Revise investigation rules to allow staff reviews to be resolved immediately through issuance of findings, conclusions, and order

A staff review is an investigation where staff works informally with a respondent to determine whether a violation has occurred and, if so, how best to resolve that violation. The rules currently specify what the Board must do when a staff review is resolved by a conciliation agreement or elevated to a full investigation.

In practice, however, there have been cases where the proper resolution for a staff review was the immediate issuance of findings, conclusions, and an order ending the matter. For example, in some disclaimer matters, the respondent can cure a violation by quickly adding a disclaimer to the disputed material. In these cases, there is no need to elevate the matter to a full investigation. Instead, the Board should have the flexibility to conclude some staff reviews by issuing findings, conclusions, and an order. A modification to the rules in this area should lead to a shorter period of time between the start of the staff review and the conclusion of the investigation.

Clarify how to report reimbursements and the purpose of expenditures

The current rules specifying how to report reimbursements to candidates and others and what level of detail is necessary to explain an expenditure's purpose should be clarified so that these items are reported uniformly by all committees.

For example, many committees currently report large lump sum reimbursements to candidates using general terms such as "expenses of serving in office" or "campaign expenses." These committees also report the date that the reimbursement was made to the candidate instead of the date of each transaction that should be itemized. Lumping multiple purchases together under a broad description and a single date does not adequately disclose to the public what the committee is spending its campaign funds on or when those expenses actually occurred. Similarly, some committees use vague terms such as "campaign expense" or "printing" to describe the purpose of their expenditures. Again, these vague terms do not adequately disclose to the public how the committee is using its funds.

Without an accurate description of the purpose of a reimbursement or an expenditure, the Board and the public cannot be sure that a committee's funds were spent for a use permitted under Minnesota Statutes section 211B.12.

Clarify when contributions made electronically are received

The rules governing receipt of contributions should be updated to cover receipt of electronic contributions.

The current rules provide that a contribution is considered to be a contribution when it is received. The rules go on to provide that a monetary contribution is received when the committee takes physical possession of the instrument conveying the contribution.

These provisions were adopted before the advent of electronic contributions and they do not reflect the manner in which electronic contributions are processed. Typically, PayPal and other electronic contribution processors hold a contribution for a length of time before transferring the funds to the candidate. The candidate then must electronically move the funds from the processor to the candidate's account. Questions have arisen regarding when the candidate

receives these electronic contributions, and if received near a filing deadline, on which report to disclose the contributions.

In addition, the Board has issued advisory opinions answering questions about whether electronic contribution processors are bundling or making contributions themselves to the candidates when they forward the contributed funds and whether these processors therefore must register as political committees. See Advisory Opinions 319, 369, and 434 (holding that electronic contribution processors are not bundling or making contributions themselves when they forward contributed funds to candidates as part of their businesses). Similar questions arose when committees began using credit cards for expenditures and rules were enacted specifying that activities conducted in a credit card company's ordinary course of business did not require the company to register or report. Similar language could be adopted for electronic contribution processors.

Replace redundant language governing public subsidy payments in special elections with language governing special elections called under Minnesota Statutes section 204B.13

The rules currently contain language specifying when an affidavit of contributions in a special election must be filed. This language is redundant and should be repealed because this deadline has been codified into statute.

New language should be added to this part to establish the public subsidy filing deadlines in special elections called under Minnesota Statutes section 204B.13. Section 204B.13 is a new statute that governs vacancies in nomination that occur in partisan offices after the official filing period has closed. This statute was recently invoked to call a special election in house district 32B after the Minnesota Supreme Court found a candidate was ineligible to run for that seat and removed him from the ballot.

In a typical special election, the deadlines for actions necessary to qualify for public subsidy payments are calculated based on the close of the filing period for the special election. Special elections called under Minnesota Statutes section 204B.13, however, do not have filing periods. To calculate the public subsidy deadlines for the special election in house district 32B, Board staff first determined that the deadline for filing the nomination certificate was the date most analogous to the close of the filing period. Staff then calculated the required public subsidy deadlines based on the deadline for filing the nomination certificate.

To ensure that everyone knows the deadlines for actions needed to qualify for public subsidy in a special election called under Minnesota Statutes section 204B.13, the current rules should be amended to specify that the deadline for nomination certificates is the date on which filing deadlines for the public subsidy agreement, affidavit of contributions, and the economic interest statement for candidates in the special election must be calculated.

Revisit the definition of securities for economic interest statements to ensure that it is not overbroad

The definition of securities for economic interest statements should be revisited to ensure that it is not overbroad and that only those holdings where potential conflicts of interest actually could exist are disclosed.

For example, given the size of most mutual funds, it is possible that disclosing ownership interests in those funds is not very helpful to the public, particularly when the funds are part of a 401k account. There also is confusion about which “holdings in a pension or retirement plan” do not have to be disclosed and whether new investment options such as 529 college savings plans should be disclosed.

Non-controversial changes

4501.0500, subpart 2, item A - Repeal language stating that faxes or electronic files received after 4:30 are considered received the next business day. This requirement is more stringent than statute and does not comply with current practice. (In obsolete rule report – ORR)

4501.0500, subpart 2, item B - Remove sentence stating that filing electronically is optional. The statute now requires all campaign finance reports to be filed electronically unless the filer has a waiver. Other language in Chapter 10A specifies that all other reports may be filed electronically. Consequently, the rule language either contradicts the statute or is redundant.

4503.0200, subpart 6 – Repeal language that no longer applies to political funds and that repeats the statutory requirement for political committees. (ORR)

4503.0300, subpart 4 - Repeal language requiring payment plans for terminating committees with debts because statutory requirement to retire debt before terminating was repealed in 2014.

4503.0400, subpart 1 – Repeal subpart because it restates statutory language requiring in-kind contributions over the itemization threshold to be disclosed, it refers to the old \$100 itemization threshold, and it includes a statutory citation that no longer applies to disclosure of in-kind contributions.

4503.0500, subpart 5 - Change threshold for disclosure from \$100 to \$200. (ORR)

4503.0500, subpart 8 - Remove sentence that requires automobile use to be reimbursed or counted as an in-kind contribution to conform to statutory change. (ORR)

4503.0700, subparts 2 and 3 - Change language to conform to new election segment/nonelection segment terminology. (ORR)

4503.1300, subpart 5 - Change time period for returning contributions to source to 90 days to comply with change to statutory time period.

4503.1400, subpart 9 - Change language to conform to new election segment/nonelection segment terminology. (ORR)

4503.1400, subpart 1 – Repeal language referring to the general account public subsidy agreement and its requirements because this type of agreement and its requirements have been abolished.

4503.1450, subpart 3 - Repeal language regarding estimate of general account public subsidy payment that is obsolete due to statutory changes in this area. (ORR)

4503.1600 – Repeal language to conform to new statutory investigation requirements.

4503.1700 - Repeal language regarding filing of 48-hour notice that is obsolete due to statutory changes. (ORR)

4503.1800, subparts 1 and 2 - Change \$100 to \$200 to conform to new itemization threshold. (ORR)

4505.0100, subpart 3 - Change “supplementary” to “annual” to reflect change to economic interest statement terminology. (ORR)

4505.0900, subparts 2 through 6 - These changes are necessary to conform the rule to new statutes requiring all public officials to file annual statements by the last Monday in January and to ensure that officials are not required to file unnecessary statements. (ORR)

4505.0900, subpart 7 - Change reporting threshold to “more than” to conform to statutory requirement.

4511.0500, subpart 2, item E - Change late fee and notice provisions to conform to new statutory requirements that impose late fee on day after report was due without notice.

4512.0100, subpart 2 – Repeal definition of “field of specialty” because this term is no longer used in gift ban statute. (ORR)

4512.0100, subpart 5 - Repeal “or similar memento” because this phrase is no longer used in the reference to plaques in the gift ban statute. (ORR)

4525.0210, subpart 1 - Repeal language referring to right to respond to complaint at prima facie stage to conform with statutory repeal of this provision.