



MINNESOTA

CAMPAIGN FINANCE BOARD

Date: June 8, 2023

To: Interested Members of the Public

From: Jeff Sigurdson, Executive Director **Telephone:** 651-539-1189

Subject: Agency Rulemaking – Review of possible topics, request for public participation

At its June 7, 2023, meeting the Board discussed the possibility of adopting new and modified administrative rules as a way to improve the Board's enforcement of Chapters 10A and 211B. The Board reviewed the attached list of possible subjects for administrative rules that had been prepared by staff. The Board concluded that it will go forward with administrative rulemaking this year. Before deciding on the topics to be included in the rulemaking effort the Board is asking for public feedback on the subject list developed by staff, and asking for suggestions for other administrative rule topics that would be beneficial to the regulated community and the general public.

If you are interested in providing comments or suggestions for Board consideration please send your ideas to CFB.Rules@state.mn.us by June 26, 2023. If you are interested in being notified by email of hearing dates and other information related to the adoption of the rules please sign up for email notifications at cfb.mn.gov/citizen-resources/the-board/statutes-and-rules/rulemaking-docket/.

Below is a review of the Board's authority to adopt administrative rules so that the public better understands the limits on subject matter that the Board may address in administrative rules. Additionally, the review contains a brief overview of Board member involvement with the adoption of administrative rules, and the process for public involvement as the rulemaking process goes forward.

The existing rules for the Board are found in Minnesota Administrative Rules:

- [Chapter 4501 – General Provisions](#)
- [Chapter 4503 – Campaign Finance Activities](#)
- [Chapter 4511 – Lobbyist Registration and Reporting](#)
- [Chapter 4512 – Gift Prohibition](#)
- [Chapter 4525 – Hearings, Audits, and Investigations](#)

Rulemaking Authority

In Minnesota Statutes Chapter 10A the Board has been delegated both general and specific rulemaking authority.

- Minnesota Statutes section 10A.02, subdivision 13, provides that the Board may adopt rules to carry out the purposes of Chapter 10A.
- Minnesota Statutes section 10A.02, subdivision 12a, provides that if the Board intends to apply principles of law or policy announced in an advisory opinion more broadly than just to the individual or association to whom the opinion was issued, then the Board must adopt an administrative rule that states that principle or policy.
- Minnesota Statutes section 10A.01, subdivision 26, provides the noncampaign disbursement categories available to candidate committees. The subdivision also provides that the Board may recognize other noncampaign disbursement categories not enumerated in statute through an advisory opinion or the adoption of an administrative rule. Noncampaign disbursements established by the Board in an administrative rule are found in Minnesota Rules, part 4503.0900.
- Minnesota Statutes section 10A.022, subdivision 2, paragraph (b), requires the Board to issue administrative rules for all audits and investigations conducted by the Board under Chapter 10A, or under "...other provisions under the board's jurisdiction pursuant to subdivision 3." Subdivision 3 of this statute provides in part, "The board may also investigate an alleged or potential violation of section 211B.04, 211B.12, or 211B.15..." to the extent that the potential violation involves state-level candidates, party units, and political committees and funds. The Board's administrative rules on audits and investigations are contained in Minnesota Rules, Chapter 4525.
- Minnesota Statutes section 10A.025, subdivision 1a, provides that the Board shall adopt rules to regulate electronic filing and ensure that the electronic filing process is secure. The Board's administrative rules on electronic filing are contained in Minnesota Rules, Chapter 4501.

Board Member Involvement

In prior rulemaking efforts the Board has established a subcommittee of at least two members to work more closely with staff on the development of language for the proposed rules, and to appear at public meetings to receive comment on the proposed rules. The subcommittee typically reports to the full Board at regular Board meetings. The subcommittee works with staff to develop a set of proposed rules, but the rules are subject to consideration, modification, and adoption by the full Board.

Alternatively, the Board may consider rulemaking issues as a committee of the whole, with

members attending public meetings as they are available. With either approach Board member involvement is very important so that the drafting of the rules is not a staff driven activity, but rather reflects the Board's direction and feedback.

Public Involvement

The Board recognizes that it is critical to provide access to the rulemaking process for interested individuals and associations. The rulemaking process in Chapter 14 requires extensive public notice of any rulemaking effort. Because of the subject of the rules the Board expects and welcomes public interest and participation. To provide a forum for interested parties to provide feedback the Board will hold at least one public hearing on the rules. The number of public hearings that will be held has not been determined, but notice will be provided when dates and times are set. To receive rulemaking notices, please sign up at the address provided on page one of this memorandum.

Attachment:

List of possible administrative rule subjects

Advisory Opinions that contain conclusions appropriate for administrative rules

Some advisory opinions are based on facts that are so specific that it would be difficult if not inappropriate to establish a rule based on the conclusions of the opinion. The following are advisory opinions issued that are based on facts that are generally applicable to the regulated community. Most of the opinions were issued within the last ten years, or are opinions that are regularly referenced by staff to answer a question.

Advisory Opinions 452 and 436 provide guidelines to ensure that joint purchases of goods or services by candidate committees, party units, and political committees results in fair distribution of costs and benefits and does not result in an in-kind contribution between the committees that jointly purchase an item.

Advisory Opinion 450 provides that a principal campaign committee may pay for certain costs related to the operation of a legislative caucus if those costs qualify as a noncampaign disbursement.

Advisory Opinion 447 provides that the source of funding used by an unregistered association to make contributions must be considered before the contribution may be accepted by a committee registered with the Board. This advisory opinion is focused on contributions from committees and funds registered with the Federal Election Commission, but contains conclusions that have wider application.

Advisory Opinion 445 provides that informational material may be provided to a public official by a principal without violating the gift prohibition if the principal had a significant role in the creation, development, and production of the information.

Advisory Opinions 224, 297, and 441 provide that state agencies and local governmental units are not lobbyist principals. Apparently, this question is recurring and could be answered on a wider basis in administrative rule.

Advisory Opinions 319, 369, and 434 consider whether a company that provides internet-based processing of contributions for registered committees is providing a contribution to those committees, or if the company needs to register as a political committee or fund. The conditions needed to ensure that the company is providing a bona fide business service could be stated in rules. This would also be an opportunity to reconsider the conclusion in Advisory Opinion 434 that a donor may pay the processing fee for a contribution made online and the processing fee does not result in a contribution to the recipient committee.

Advisory Opinions 89, 127, 209, 211, and 228 all address the question of how to report an equipment purchase by a principal campaign committee. Minnesota Rules 4503.0900 could be modified to provide that the purchase of durable equipment or electronics, such as a computer, fax machine, printer/copier, cellphone, etc., is a campaign expenditure, rather than a noncampaign disbursement, unless the equipment is used solely to provide constituent services, is equipment used while campaigning by a person with a disability, or is home security hardware.

Existing administrative rules that could be updated and clarified.

Minnesota Rules 4501.0100 and 4501.0200 – update sections on “electronic filing system” and the signature requirement for electronic filing to reflect the current online reporting system operated by the Board.

Minnesota Rules 4503.0100 – add a definition of “county office in Hennepin County” that includes the offices of county commissioner, county attorney, and sheriff. This would help with the reporting required by party units, political committees, and political funds of contributions and independent expenditures to influence elections in Hennepin County.

Minnesota Rules 4503.0100 – add a definition for “nomination”. Chapter 10A makes multiple references to the “nomination or election” of a candidate without specifying what the term nomination means.

Minnesota Rules 4503.0200, subpart 5 – this subpart is partially obsolete. Specifically, the text “when notice required under subpart 4 is filed or” should be deleted because subpart 4 was repealed in 2005.

Minnesota Rules 4503.0800, subparts 2-4 – these subparts are partially obsolete. Specifically, in subpart 2 the phrase “multiple candidates” should be changed to “multiple candidates or local candidates” and in subparts 3 and 4 each instance of the word “candidate” should be changed to “candidate or local candidate”. This change is needed because Minnesota Statutes section 10A.01, subdivisions 4 and 11, were amended in 2021 to alter the definitions of the terms approved expenditure and contribution to be inclusive of a local candidate. The term local candidate is defined by Minnesota Statutes section 10A.01, subdivision 10d, to include certain candidates for local office within Hennepin County. A similar problem exists in Minnesota Rules 4503.1000 which can be resolved by updating “candidates” to “candidates or local candidates.”

Minnesota Rules 4503.0900, subpart 1 – add a new noncampaign disbursement category for costs required to maintain a bank account that is required by statute, including service fees, the cost of checks, and check processing fees.

Minnesota Rules 4503.0900 – add a new subpart stating that the purchase of durable equipment or electronics, such as a computer, fax machine, printer/copier, cellphone, etc., is a campaign expenditure, rather than a noncampaign disbursement, unless the equipment is used solely to provide constituent services, is equipment used while campaigning by a person with a disability, or is home security hardware. This would effectively codify Advisory Opinions 89, 127, 209, 211, and 228.

Minnesota Rules 4511.0500, subpart 1 – this subpart is partially obsolete. Specifically, the text “subpart 2” should be changed to “Minnesota Statutes section 10A.04, subdivision 9” because subpart 2 was repealed and replaced by section 10A.04, subdivision 9, in 2017.

Minnesota Rules 4525.0200, subpart 2 – modify the text to clearly only require the authorized representative’s mailing address, rather than the complainant’s address, if a complaint is signed by an individual authorized to act on behalf of the complainant. The rule would not permit anonymous complaints but would clarify that a complainant may provide their authorized representative’s mailing address rather than their personal mailing address.

Potential New Rules

Provide that a treasurer may group expenses together within campaign finance reports on a monthly basis so long as the expenses are for the same goods or services, from the same vendor, and all expenses incurred within a particular reporting period are disclosed through the end of that period. For example, a committee’s payment processing fees withheld by ActBlue or

WinRed may be grouped together within a calendar month, rather than having to enter every individual fee.

Provide procedures for the Board to use when conducting random audits of registered committees, funds, party units, and candidates. Similarly, establish procedures and criteria for the Board to use when conducting an audit that is not random, but rather based on indications that inaccurate information has been reported to the Board.

Establish procedures and criteria for use in the audit of affidavits of contributions submitted to qualify for a public subsidy payment.

Establish criteria required in order for the candidate to be deemed not responsible for the actions of a vendor or a subcontractor of a vendor hired by the candidate's committee, such as when the actions of a vendor or subcontractor unintentionally result in coordinated expenditures.

Review Minnesota Rules, Chapter 4511, which provides procedures for lobbyist registration and reporting, to ensure that the rules are still applicable given the changes made to the lobbyist program at the 2023 legislative session.

Establish a procedure for withdrawing a complaint filed with the Board.