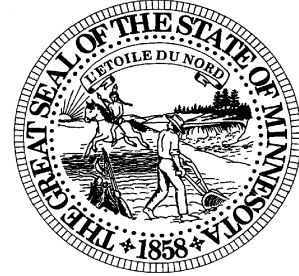


Minnesota

Campaign Finance and Public Disclosure Board



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

Advisory Opinion 409

SUMMARY

Communication with officials for compensation may bring an individual within the definition of a lobbyist. Once a person is a lobbyist all support for the lobbyist's communication is reported as lobbyist disbursements. Underlying support activities for a project are not lobbyist disbursements unless they support a lobbyist's communications.

FACTS

As the attorney for a nonprofit corporation, ("The Nonprofit Corporation") you ask the Board for an advisory opinion based on the following facts:

1. Minnesota has a number of legislative entities that are experts in various areas of public policy and are charged with making recommendations to the full Legislature regarding appropriations made through the programs under their jurisdictions. These legislative entities (collectively, "Committees") are usually made up of citizens with certain qualifications and members of the House and Senate. For the purpose of this Advisory Opinion it will be assumed that all Committee members are public officials under Minn. Stat. § 10A.01, subd. 35 (10) and 35 (23).
2. Each committee has paid staff that helps implement its programs.
3. The Committees solicit applications for funding through various solicitation processes.
4. Applications for funding may require research or collection of data, and the written proposals may include exhibits such as maps and other data regarding the attributes and features of the projects proposed. Proposals also include detailed project budgets.
5. Applicants for funding may communicate regularly with Committee staff, both in writing and orally, prior to formal submission of the application and afterward. Generally such communications do not involve the applicant expressly urging Committee staff to

communicate with public officials about the proposal. Prior to formal submission of an application, committee staff works with all potential applicants equally.

6. After proposals are submitted, the Committee evaluates the proposals and invites some but not all applicants to appear before the Committee to present the proposal and answer any questions. In the presentation, the applicant may urge that the Committee support funding for the proposal.
7. After further evaluation of the proposals presented, the Committees give certain applicants preliminary approval for a specified appropriation level. The applicant then develops a more detailed plan for the recommended funding. There is then additional written and oral communication between the Committee staff and the applicant.
8. After finalizing the detailed plan with Committee staff, the proposal is submitted for final approval by the Committee. The Committees typically recommend a package of several proposals for funding.
9. The Committees make recommendations to the full Legislature for a vote on appropriations for the recommended projects. (The Governor also must approve the appropriation.)

Issue One

Oral communications that attempt to influence appropriation recommendations occur with the public officials serving on the Committees. Do these communications constitute lobbying for purposes of: a) registration as a lobbyist as required by Minn. Stat. § 10A.03; and/or b) reporting lobbying expenditures as required by Minn. Stat. § 10A.04?

Opinion

A person must register as a lobbyist if the person is “engaged for pay or other consideration of more than \$3,000 from all sources in any year for the purpose of attempting to influence legislative . . . action . . . by communicating or urging others to communicate with public or local officials.” Minnesota Statutes Section 10A.01, subd. 21.

All of the members of the Committees are public officials. The work of the Committees eventually results in recommendations to the Legislature regarding appropriations. Communication with Committee members is, by definition, communication with public officials. Due to the fact that the Committees will ultimately make recommendations to the legislature, communication urging the Committees to include a project in their recommendations constitutes communication for the purpose of attempting to influence legislative action.

Such communications are included in the communications that may trigger a person being defined as a lobbyist under §10A.01, subd. 21. Once a person is included in the definition of a lobbyist, that person must register according to the terms of §10A.03.

Expenditures reported by a lobbyist under §10A.04, do not include the lobbyist's compensation for lobbying. Thus, if the person testifying is the lobbyist, the cost of that person's time appearing before the Committees is not reported on the lobbyist's report.

If the Nonprofit Corporation has a lobbyist who is involved in legislative action related to the proposals, but a paid staff member other than the lobbyist presents a project to the Committees, the cost of that staff member's paid time is a lobbyist disbursement that must be included on the lobbyist's disbursement report.

Issue Two

Is the preparation of written materials, including the application, supporting documentation, budgets, including editing back and forth with Committee staff, that will be presented ultimately to a Committee in support of an application for an appropriation lobbying for purposes of a) registration as a lobbyist as required by Minn. Stat. § 10A.03; and/or b) reporting lobbying expenditures as required by Minn. Stat. § 10A.04?

Opinion

The staff members of the Committees are not, themselves, public officials, so there is no direct communication with public officials that would make a person communicating with Committee staff a lobbyist under §10A.01, subd. 21. However, a person may also become a lobbyist if the person "urg[es] others to communicate with public officials" to influence legislative action.

The communication with Committee staff to develop and refine a proposal, without more, is not communication urging the staff to communicate with Committee members on behalf of the Nonprofit Corporation's proposal. Therefore, this communication could not make a person a lobbyist under §10A.01, subd. 21. However, it is possible that a fact situation could arise in which the Nonprofit Corporation's staff did, in fact, urge Committee staff to advocate the Nonprofit Corporation's proposal to the Committee. Under such a fact setting, the communication would be included in communication that could bring a person within the definition of a lobbyist and trigger the registration requirement.

If the Nonprofit Corporation has a registered lobbyist, costs of all activities that support that lobbyist's communication with public officials, including preparation of proposals to be presented, are a part of that lobbyist's reportable disbursements. This is the case whether the lobbyist's communications are with the public officials on the Committees or with legislators or legislative staff later in the process of obtaining legislative funding for the proposed project.

If the Nonprofit Corporation communicates with officials only through its non-lobbyist staff members, that communication is lobbying under Minn. Rules Part 4511.0100, subp. 3, even though the communication may not bring the staff member within the definition of a lobbyist. Since the activities supporting development of the project support the staff member's lobbying, they are reportable on the disbursement report filed by the Nonprofit Corporation's lobbyist under §10A.04, subsd. 2 and 4, and Minn. Rules Part 4511.0100, subp. 4.

Issue Three

Are oral communications with the staff of the Committees that do not expressly urge the committee staff to communicate with public officials regarding appropriations that will be recommended by the Committees lobbying for purposes of a) registration as a lobbyist as required by Minn. Stat. § 10A.03; and/or b) reporting lobbying expenditures as required by Minn. Stat. § 10A.04?

Opinion

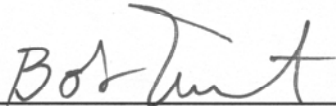
Communications that do not urge others to communicate with public officials to influence the action of those officials are not included in the communications that will bring a person into the definition of a lobbyist under §10A.01, subd. 21, with the resultant registration requirement under §10A.03.

The Board notes that the requester uses the phrase "expressly urge" in describing the communications. The statute does not include the word "expressly" and the Board does not interpret the §10A.01, subd. 21, as requiring one to "expressly urge" others to communicate with officials. Some communications could include by implication a message urging others to communicate with officials. Such communications would be included in those that could make a person a lobbyist. However, communications in the course of developing a proposal, including activities described in Issue Two, without more, would not be considered communications urging others to advocate on behalf of the proposal.

It is understood that the Nonprofit Corporation's staff will believe that their proposal has merit and should move forward. The Nonprofit Corporation's staff should use restraint in conveying that belief to staff of the Committees.

Treatment of the costs of staff communications as lobbyist disbursements follows the same criteria as described for staff work in Issue Two.

Issued August 3, 2010



Bob Milbert, Chair
Campaign Finance and Public Disclosure Board

STATUTORY AND ADMINISTRATIVE RULE CITATIONS

10A.01 DEFINITIONS

Subd. 21. **Lobbyist.** (a) "Lobbyist" means an individual:

(1) engaged for pay or other consideration of more than \$3,000 from all sources in any year for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials; or

(2) who spends more than \$250, not including the individual's own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials.

10A.03 LOBBYIST REGISTRATION.

Subdivision 1. **First registration.** A lobbyist must file a registration form with the board within five days after becoming a lobbyist or being engaged by a new individual, association, political subdivision, or public higher education system.

. . .

10A.04 LOBBYIST REPORTS.

Subdivision 1. **Reports required.** A lobbyist must file reports of the lobbyist's activities with the board as long as the lobbyist continues to lobby. The report may be filed electronically. A lobbyist may file a termination statement at any time after ceasing to lobby.

. . .

Subd. 4. **Content.** (a) A report under this section must include information the board requires from the registration form and the information required by this subdivision for the reporting period.

(b) A lobbyist must report the lobbyist's total disbursements on lobbying, separately listing lobbying to influence legislative action, lobbying to influence administrative action, and lobbying to influence the official actions of a metropolitan governmental unit, and a breakdown of disbursements for each of those kinds of lobbying into categories specified by the board, including but not limited to the cost of publication and distribution of each publication used in lobbying; other printing; media, including the cost of production; postage; travel; fees, including allowances; entertainment; telephone and telegraph; and other expenses.

Minnesota Rules

4511.0100 DEFINITIONS.

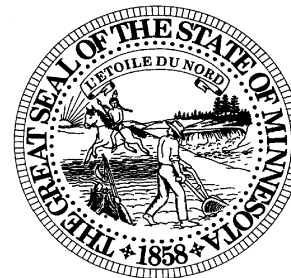
. . .

Subp. 3. Lobbying. "Lobbying" means attempting to influence legislative action, administrative action, or the official action of a metropolitan governmental unit by communicating with or urging others to communicate with public officials or local officials in metropolitan governmental units. Any activity that directly supports this communication is considered a part of lobbying.

Subp. 4. Lobbyist's disbursements. "Lobbyist's disbursements" include all disbursements for lobbying made by the lobbyist, the lobbyist's employer or employee, or any person or association represented by the lobbyist, but do not include compensation paid to the lobbyist.

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under Minn. Stat. § 10A.02, subd. 12(b)**

Advisory Opinion 410 – Revised

**This opinion replaces Advisory Opinion 410 issued August 3, 2010.
Question 8 did not appear in the earlier version of the Opinion.**

SUMMARY

An independent expenditure is an expenditure that is made “without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, any candidate or any candidate's principal campaign committee or agent. Communications with others that do not involve any candidate, candidate’s principal campaign committee, or agent, will not defeat the independence of an expenditure.

FACTS

1. As the attorney representing an organization, you ask the Board for an advisory opinion based on the following facts:
2. The Organization is a an association as defined in Minnesota Statutes Chapter 10A.
3. The Organization was formed with a primary purpose of accepting contributions and making independent expenditures to directly or indirectly influence the selection, nomination, election or appointment of individuals to public office.
4. The Organization intends to register with the Board as an Independent Expenditure Political Committee (“IEPC”) within fourteen (14) days after receiving more than \$100 in revenue or incurring \$100 in obligations.

The Organization requests the Board's opinion with respect to certain activities involving independent expenditures and agency relationships that could be created between an IEPC and other associations or candidates. Specifically, the Organization asks whether the "independence" of an independent expenditure by an IEPC is impermissibly compromised in any of the scenarios described below.

INTRODUCTION

The series of scenarios posed by the Organization are designed to clarify the limits of conduct that may be engaged in without jeopardizing the independence of an independent expenditure.

The concept of "independent expenditure" is defined in Minnesota Statutes Section 10A.01, subd. 18. First, the transaction must, in fact be an expenditure, which is a use of money or goods or services. For the purposes of this Advisory Opinion, the transactions described are defined by the facts as "expenditures". The expenditure must also expressly advocate the election or defeat of a clearly identified candidate. For the purposes of this Advisory Opinion, all transactions described in the scenarios will be assumed to meet the express advocacy requirement.

The final characteristic of an independent expenditure is that it must be made "without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, any candidate or any candidate's principal campaign committee or agent." It is the scope of this requirement that this Advisory Opinion addresses.

QUESTIONS

1. The IEPC accepts a contribution from a corporation ("Corporation X") and the IEPC then makes an independent expenditure to support Candidate A and:
 - a. An employee of Corporation X serves on the IEPC Advisory Committee and also serves as a member of the candidates fundraising committee or as a paid or volunteer campaign worker for Candidate A.

Opinion: The Board assumes that the IEPC "Advisory Committee" provides input to the IEPC with respect to its independent expenditure spending decisions. While "campaign worker" and "committee member" are not terms that are defined in Minnesota Statutes Chapter 10A, the Board further assumes that most committees considers their campaign workers to be members of the campaign committee. The question, rephrased, is whether a campaign worker/committee member may participate in an independent expenditure political committee's decision making process in which the IEPC may decide to make an independent expenditure supporting the candidate. The Board concludes that under the facts described there is a strong presumption that the resulting expenditure would not be an independent expenditure.

It is not clear from the facts that the campaign worker represents the principal campaign committee or is an agent of the principal campaign committee. However, the fact that the committee would enter into an arrangement that resulted in an individual working for the committee and at the same time advising

an IEPC on its independent expenditure decisions that might affect the candidate suggests express or implied agency. Only an after-the-fact analysis of the evidence surrounding the arrangements would permit a definitive conclusion on whether the independence of the subject expenditure was destroyed. For this reason the Board strongly recommends against entering into situations such as the one described in this scenario.

- b. An employee of Corporation X does not serve on the IEPC Advisory Committee but serves as a member of the candidates fundraising committee or as a paid or volunteer campaign worker for Candidate A.

Opinion: In responding to this question, the Board assumes that not only does the employee not serve on the IEPC Advisory Committee, but that the employee has no involvement whatsoever with the IEPC and does not engage in activities intended to influence the decisions of the IEPC. Since the employee has no role or influence in the operation or decision-making process of the IEPC, the necessary link between the candidate and the IEPC that could destroy the independence of an expenditure does not exist.

- c. An employee of Corporation X serves on the IEPC Advisory Committee and hosts a fundraiser for Candidate A.

Opinion: The facts presented in this scenario do not suggest knowledge by the candidate of any intended independent expenditure by the IEPC. Thus, there is no opportunity for the actions described in the independent expenditure definition that would defeat the independence of the expenditure.

- d. An employee of Corporation X does not serve on the IEPC Advisory Committee but hosts a fundraiser for Candidate A at her personal residence.

Opinion: The result is the same as described in Question 1.c.

- e. An employee of Corporation X serves on the IEPC Advisory Committee and also holds a leadership position in the political party that supports Candidate X.

Opinion: The Board recognizes the separate identities of political parties and their candidates. While the Board understands that parties and their candidates have similar interests, the Board will not presume that a party acts for or on behalf of a candidate. Absent facts showing that the party, through its official, acted on behalf of the candidate or represented the candidate, the scenario does not describe the necessary link between the candidate and the IEPC that could destroy the independence of the expenditure.

- f. An employee of Corporation X does not serve on the IEPC Advisory Committee but holds a leadership position in the political party that supports Candidate X.

Opinion: The result is the same as described in Question 1.e.

2. The IEPC accepts a contribution from a corporation (“Corporation Y”) and makes an independent expenditure to support Candidate B and:

- a. An employee of Corporation Y serves on an IEPC Committee. At a social event, the employee tells Candidate B that the IEPC intends to take out an ad to support Candidate B prior to the election.

Opinion: The described conversation takes place prior to the independent expenditure being made. Although the IEPC representative is not asking for the candidate’s consent or authorization, the danger is that the candidate will nevertheless consent to the expenditure or implicitly approve of it. If the conversation goes beyond the employee’s statement, the independence of the expenditure could inadvertently be destroyed. Minnesota’s statute is very broad and its intent is clear that independent expenditure spenders and candidates should not engage in conversations about proposed independent expenditures. The IEPC’s staff should be strongly advised to avoid such conversations with candidates, their committee members, or others working on their campaigns.

- b. An employee of Corporation Y holds no official office on the IEPC. At a social event, the employee tells Candidate B that the IEPC intends to take out an ad to support Candidate B prior to the election.

Opinion: In responding to this question, the Board assumes that not only does the employee not hold an office on the IEPC, but that the employee has no involvement whatsoever with the operation or decision-making process of the IEPC and does not engage in activities intended to influence the decisions of the IEPC. Since the employee has no role or influence in the operation or decision-making process of the IEPC, the necessary link between the candidate and the IEPC that could destroy the independence of an expenditure does not exist. If the facts show that the employee somehow represents the IEPC, the result would be the same as in Question 2.a.

3. The Treasurer of the IEPC is also the treasurer of an unrelated state political committee or fund. The state political committee or fund contributes to Candidate C and the IEPC expends funds to independently support Candidate C.

Opinion: This scenario presents no link to the candidate that would destroy the independence of the IEPC’s expenditure.

4. The supporting organization for the IEPC has staff members that work on the IEPC and also make contributions for the supporting organization’s separate state political committee or fund.

Opinion: This scenario presents no link to the candidate that would destroy the independence of the IEPC’s expenditure.

5. A member of the IEPC Advisory Committee or employee also holds a position which allows him or her to direct political committee or fund contributions of an unrelated entity.

Opinion: There is no prohibition on the same people being involved in the operation of

multiple political committees or funds. This scenario presents no link to the candidate that would destroy the independence of the IEPC's expenditure.

6. An employee of Corporation Z volunteers to make fundraising calls and solicitations for the IEPC. Corporation Z makes a contribution to the IEPC. The employee holds no formal position with the IEPC. The IEPC makes an independent expenditure to support Candidate D. May the employee hold a fundraising event for Candidate D?

Opinion: The scenario presented does not disclose any facts to suggest that the subject of the IEPC's independent expenditure to support the candidate was discussed with the candidate or any agent. Therefore, the scenario does not present any opportunity for actions that would defeat the independence of the expenditure.

7. The chair of a political party or legislative caucus asks the IEPC to support "the party's or caucuses candidates" on the ballot this fall. The IEPC subsequently makes an independent expenditure to support one of the party's candidates.

Opinion: The Board assumes that political parties often ask both individuals and registered political committees or funds to support their candidates. The Board recognizes the separate identities of political parties and their candidates. While the Board understands that parties and their candidates have similar interests, the Board will not presume that a party acts for or on behalf of a candidate. Absent facts showing that the party, through its official, acted on behalf of the candidate or represented the candidate, the scenario does not describe the necessary link between the candidate and the IEPC that could destroy the independence of the expenditure.

8. The IEPC meets with representatives from a political party or legislative caucus and asks party leadership which specific candidates need support in the upcoming election. The IEPC subsequently makes independent expenditures based on the information received from caucus or party representatives.

Opinion. The Board does not presume that there is always coordination between a party unit and its candidates. However, the Board is aware that such coordination occurs in many circumstances. When coordination does occur, it is possible that the party unit may become an agent of the candidate with respect to transactions with third parties such as the subject IEPC.

Whether there is actual coordination is always a fact question that is not readily susceptible to presentation in a hypothetical situation. For example, if a candidate approaches a caucus and asks for help in the election, the conversation could constitute express or implied consent or a request that the party unit make expenditures on the candidate's behalf. As a result, any subsequent party unit expenditures could be approved expenditures rather than independent expenditures. If that same party unit, acting as a result of the candidate's request, solicits expenditures by a third party, the party unit may be acting as the agent of the candidate and, again, the resulting expenditures may not be independent expenditures.

The specific conversations and interactions that take place in real-world situations cannot be completely predicted in a hypothetical question. Thus, it is not possible to provide an unqualified opinion based on hypothetical situations. As with all independent

expenditure questions, the Board points out that a high wall of separation between the party unit and its candidates is required if the party unit's expenditures, or expenditures made at the request of the party unit are to be independent expenditures.

9. The IEPC hires a polling firm to conduct a poll and:

- a. the IEPC shares the cost of polling activities with another IEPC. Both IEPCs use the poll results in their respective advertising campaigns to oppose Candidate E.

Opinion: independent expenditure political committees or funds may donate to one another and, by extension, may pool resources and share costs. Depending on how the costs were allocated, an in-kind contribution from one IEPC to the other might result, which would have to be included in the next report filed with the Board.

- b. the IEPC shares the cost of polling activities with a political party or legislative caucus. The results of the poll are used by the IEPC and the political party or legislative caucus to make independent expenditures.

Opinion: Legislative caucuses are party units, so the question as stated applies to all party units. While the scenario as presented would not destroy the independence of resulting independent expenditures, it presents a different potential problem.

Independent expenditure political committees or funds are not permitted to make contributions to party units. The Board believes that polling results are not diminished in value by being shared between two entities, the value of the results to each entity is the same as either would have had to pay for the results on its own. Therefore, sharing costs of a poll as described would result in a prohibited contribution from the IEPC to the party unit.

10. The IEPC hires a consultant who:

- a. is also hired by another IEPC and provides both IEPC's with services to assist them in coordinating their message and / or media campaign in support of, or opposition to, a common candidate.

Opinion: Independent expenditure political committees or funds may coordinate their independent expenditures with one-another. The scenario does not present facts that would destroy the independence of resulting expenditures.

- b. also provides consulting services to a political party which supports the same candidate.

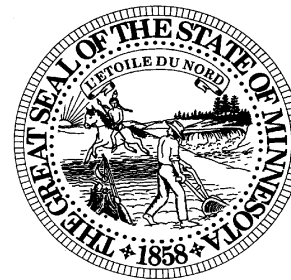
Opinion: The result is the same as in Question 10.a.

- c. also provides consulting services to the candidate which will benefit from the IEPC's independent expenditure.

Opinion: If a consultant providing services on messaging and timing of

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Advisory Opinion 411

SUMMARY

Use of the noncampaign disbursement category for expenses of serving in office is not available to pay for home health care of a close relative while a public official is traveling. The Board declines to establish a new noncampaign disbursement category to permit the proposed use of principal campaign committee funds.

FACTS

As an elected public official, you ask the Board for an advisory opinion based on the following facts:

1. In your capacity as an elected public official, you are occasionally required to travel to participate in national meetings directly related to your service as a public official.
2. Attendance at these meetings may require you to be out of Minnesota for several days at a time.
3. You are the primary caregiver of a close family member who resides with you and who suffers from a condition that requires home health care when you are absent overnight.

You ask whether the costs of providing home health care for your family member when you are away on official business may be paid using campaign funds of your principal campaign committee.

OPINION

Funds of a candidate's principal campaign committee may be used for activities that are done for "political purposes", which means to influence the voting at an election. The exception to this general requirement is that principal campaign committee funds may also be used for noncampaign disbursements as defined in §10A.01, subd. 26. (Minn. Stat. §211B.12; §211B.01).

The only noncampaign disbursement that might apply to the facts presented is for:

"payment by a principal campaign committee of the candidate's expenses for serving in public office, other than for personal uses". (Minn. Stat. §10A.01, subd. 26(10)).

When interpreting Chapter 10A, the Board is guided by the same statutes that guide the courts when they interpret Minnesota statutes. The first canon of construction is that whenever possible, words and phrases should be given their plain meaning. If the words of the statute are unclear, the intent of the legislature controls.

The language of the noncampaign disbursement quoted above is clear. Its application is limited to "expenses of serving in public office" incurred by the office holder. Its use may not be extended to expenses for "personal uses".

On previous occasions when the Board has reviewed this exception, it has stated that the noncampaign disbursement applies to costs "directly related to" service in office. (Advisory Opinion 255). The Board has also said that the noncampaign disbursement is for "ordinary and reasonable expenses of those activities that are expected or required of a public official or that enhance the official's ability to serve". (Advisory Opinion 314). The Board is of the opinion that a close link between the expense and the official's service is required for use of this noncampaign disbursement.

Every office holder incurs various personal costs as a result of serving in office. These costs may range from loss of income from a job to the need to pay others to take care of obligations that the office holder does not have the time to attend to. Such costs are only indirectly related to the official's public service and are not the ordinary expenses that are expected or required of all officials.

Even if it were to conclude that the language of the statute is insufficiently clear, the Board would still conclude that the noncampaign disbursement exception does not apply to the facts presented.

When attempting to ascertain legislative intent, §645.17 requires that it must be presumed that the legislature intends to favor the public interest as against any private interest. Section 645.16 requires considering the consequences of a particular interpretation of a statute.

The Board recognizes that money received by principal campaign committees consists of donations, primarily from citizens. In the past, these donations were partly refunded to donors through the political contribution refund program, with the result that public money was substituted for individual donations. The public interest suggests that the Board should be cautious in allowing the extension of noncampaign disbursements to expenses not clearly established by the legislature.

STATUTORY CITATIONS

10A.01 DEFINITIONS

. . .

Subd. 26. **Noncampaign disbursement.** "Noncampaign disbursement" means a purchase or payment of money or anything of value made, or an advance of credit incurred, or a donation in-kind received, by a principal campaign committee for any of the following purposes:

. . .

(10) payment by a principal campaign committee of the candidate's expenses for serving in public office, other than for personal uses;

(11) costs of child care for the candidate's children when campaigning;

. . .

211B.01 DEFINITIONS.

Subdivision 1. **Application.** The definitions in chapter 200 and this section apply to this chapter.

. . .

Subd. 6. **Political purposes.** An act is done for "political purposes" when the act is intended or done to influence, directly or indirectly, voting at a primary or other election. This does not include news items or editorial comments published or broadcast by the news media.

211B.12 LEGAL EXPENDITURES.

Use of money collected for political purposes is prohibited unless the use is reasonably related to the conduct of election campaigns, or is a noncampaign disbursement as defined in section 10A.01, subdivision 26. The following are permitted expenditures when made for political purposes:

(1) salaries, wages, and fees;

(2) communications, mailing, transportation, and travel;

(3) campaign advertising;

(4) printing;

(5) office and other space and necessary equipment, furnishings, and incidental supplies;

(6) charitable contributions of not more than \$100 to any charity organized under section 501(c)(3) of the Internal Revenue Code annually, except that the amount contributed by a principal campaign committee that dissolves within one year after the contribution is made is not limited by this clause; and

(7) other expenses, not included in clauses (1) to (6), that are reasonably related to the conduct of election campaigns. In addition, expenditures made for the purpose of providing information to constituents, whether or not related to the conduct of an election, are

permitted expenses. Money collected for political purposes and assets of a political committee or political fund may not be converted to personal use.

645.08 CANONS OF CONSTRUCTION.

In construing the statutes of this state, the following canons of interpretation are to govern, unless their observance would involve a construction inconsistent with the manifest intent of the legislature, or repugnant to the context of the statute:

- (1) words and phrases are construed according to rules of grammar and according to their common and approved usage; but technical words and phrases and such others as have acquired a special meaning, or are defined in this chapter, are construed according to such special meaning or their definition;

645.16 LEGISLATIVE INTENT CONTROLS.

The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. Every law shall be construed, if possible, to give effect to all its provisions. When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit. When the words of a law are not explicit, the intention of the legislature may be ascertained by considering, among other matters:

- (1) the occasion and necessity for the law;
- (2) the circumstances under which it was enacted;
- (3) the mischief to be remedied;
- (4) the object to be attained;
- (5) the former law, if any, including other laws upon the same or similar subjects;
- (6) the consequences of a particular interpretation;
- (7) the contemporaneous legislative history; and
- (8) legislative and administrative interpretations of the statute.

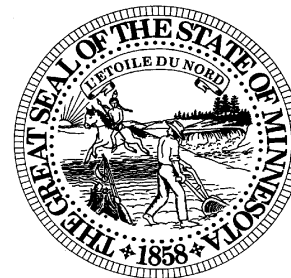
645.17 PRESUMPTIONS IN ASCERTAINING LEGISLATIVE INTENT.

In ascertaining the intention of the legislature the courts may be guided by the following presumptions:

- (1) the legislature does not intend a result that is absurd, impossible of execution, or unreasonable;
- (2) the legislature intends the entire statute to be effective and certain;
- (3) the legislature does not intend to violate the Constitution of the United States or of this state;
- (4) when a court of last resort has construed the language of a law, the legislature in subsequent laws on the same subject matter intends the same construction to be placed upon such language; and
- (5) the legislature intends to favor the public interest as against any private interest.

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under Minn. Stat. § 10A.02, subd. 12(b)**

Advisory Opinion 412

SUMMARY

Whether a candidate's contribution to, or support of, an independent expenditure political committee or fund affects the independence of expenditures by that political committee or fund benefitting other candidates depends on the relationship between the supporting candidate and the candidate benefited by the subject independent expenditure.

FACTS

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

1. The Association is considering registering as an independent expenditure political committee or registering an independent expenditure political fund with the Board under the provisions of Laws of Minnesota, 2010, Chapter 397.
2. The proposed independent expenditure political committee or fund will make independent expenditures supporting or opposing state legislative candidates.
3. Several candidates whose races would not be the subject of independent expenditures made by the new independent expenditure political committee or fund have approached the Association to determine if they could assist with fundraising. This group of candidates is referred to as "the supporting candidates" in this opinion.
4. As a result of these requests, you ask the Board to for an opinion addressing the questions set forth below.

BOARD ASSUMPTIONS

When the Board considers independent expenditures, it always refers to the controlling statute, §10A.01, subd. 18, which states that:

"Independent expenditure" means an expenditure expressly advocating the election or defeat of a clearly identified candidate, if the expenditure is made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, any candidate or any candidate's principal campaign committee or agent. An independent expenditure is not a contribution to that candidate.

It is obvious from the definition of independent expenditure that questions of express or implied consent and of agency must always be considered. No hypothetical fact situation will exactly match the way events occur in the real world. Conversations and relations cannot be predicted or defined in detail. For this reason, the Board cautions the requester and readers of advisory opinions related to independent expenditures. The result reached in an advisory opinion will be applicable to a real-world situation only to the extent that every relevant fact, event, and relationship in the real-world situation is described and considered in the advisory opinion request.

In this opinion, the hypothetical facts do not mention any relationship or any communication between any of the supporting candidates and any candidate who will benefit from the described independent expenditures. For the purposes of this opinion, the Board assumes that no such relationship exists and that no conversations relevant to the question of agency or consent have occurred. If relationships exist or conversations take place between a supporting candidate and a candidate who benefits from the subject independent expenditures, the Board would be required to examine those factors to determine if the independence of the resulting expenditure is destroyed.

For the purposes of this opinion, the Board assumes that there is no element of agency between any supporting candidate and any candidate who would benefit from an independent expenditure made by the Association's political committee or fund.

QUESTION ONE

May the supporting candidates donate to the independent expenditure political committee or fund as individuals?

OPINION

Chapter 10A does not restrict the right of an individual to donate to any political committee or fund of the individual's choice. Whether such a contribution affects the independence of a resulting independent expenditure is subject to the analysis described in the Board Analysis above.

QUESTION TWO

May a supporting candidate's principal campaign committee donate to the Association's independent expenditure political committee or fund? Does the answer change if the supporting candidate signed a Public Subsidy Agreement for the 2010 election cycle?

OPINION

Use of principal campaign committee funds in general is governed by Minnesota Statutes Section 211B.12 and 211B.01(6). Initially, the requester must determine whether a candidate's principal campaign committee donation to the Association's independent expenditure political committee or fund is permitted under Chapter 211B. If the requester determines that such a donation is permitted Chapter 211B, then further inquiry into the effect of Chapter 10A is required.

Chapter 10A does not specifically prohibit a candidate's principal campaign committee from donating to a political committee or fund. Thus, in most situations if Chapter 211B permits such a donation, it will not be precluded by Chapter 10A.

However, Minnesota Statutes Section 10A.25(3a), which prohibits candidate's principal campaign committees from making independent expenditures, applies to all candidates who sign a Public Subsidy Agreement. By signing a Public Subsidy Agreement, a candidate agrees that the candidate's principal campaign committee will not make independent expenditures.

When a candidate has agreed that his or her principal campaign committee may not make independent expenditures, that candidate is not permitted to avoid the agreement by making a donation to another entity which, by definition, will use the money to make independent expenditures.

QUESTION THREE


May the supporting candidates assist with fundraising by (a) headlining a fundraising event or (b) writing a letter on behalf of the new independent expenditure political committee or fund?

OPINION

Providing services without compensation, including headlining a fundraising event, is not recognized as a contribution under Chapter 10A. Thus, a supporting candidate's hosting of a fundraising event for the independent expenditure political committee or fund would not result in a reportable transaction or in a violation of Chapter 10A.

Similarly, an individual candidate's writing a letter to be used by the independent expenditure political committee or fund will not be recognized as a contribution; will not result in a reportable transaction; and, thus, cannot result in a violation of Chapter 10A. Spending money to reproduce or distribute the letter, however, would result in a contribution to the independent expenditure political committee or fund.

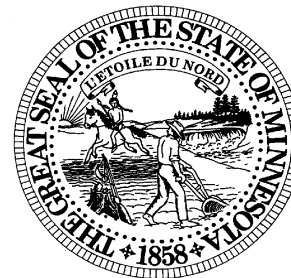
Issued October 5, 2010



Bob Milbert, Chair
Campaign Finance and Public Disclosure Board

Minnesota

*Campaign Finance and
Public Disclosure Board*



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Advisory Opinion 413

SUMMARY

Lobbyists must register on behalf of each association whose interests it promotes, regardless of the mechanism used to retain or direct the efforts of the lobbyists.

FACTS

As the attorney for a business enterprise ("the Enterprise"), you ask the Campaign Finance and Public Disclosure Board for an advisory opinion based on the following facts.

1. The Enterprise consists of a parent company and a number of affiliates, including subsidiaries and joint ventures controlled by or under common ownership and control of the parent company ("the Affiliates"). Several of the Affiliates have legislative and administrative interests in Minnesota, and lobbying is conducted on their behalf.
2. The parent company has created a subsidiary (herein referred to as "the Service Company") specifically to manage a range of legal and professional functions for the Affiliates, including directing and controlling their government affairs activities. The Service Company has no independent legislative or administrative interests in Minnesota.
3. The Service Company solely directs and controls the government affairs activities conducted on behalf of the Affiliates. Among other things, this includes developing legislative and administrative priorities and government affairs strategy; determining if and under what circumstances lobbyists will be retained (either as employees of Service Company or as contract lobbyists of the Service Company) to represent the interests of one or more of the Affiliates; directing and controlling which matters the lobbyists act on,

the positions that they will take and the messages that they will convey; and providing resources for the lobbying effort. Although the Affiliates consult with the Service Company, none of the Affiliates directs or controls the lobbyists who represent their respective interests.

4. The Minnesota lobbyists who represent the interests of one or more of the Affiliates are not under contract with or paid by such Affiliate(s). Rather, they are either employees of the Service Company or contract directly with the Service Company to act on behalf of the Affiliates. Hence, the Service Company is the entity that makes all payments to the lobbyists, both for their services and related expenses.
5. Although the Service Company pays such lobbying expenses, each Affiliate directly reimburses the Service Company for the payments the Service Company makes on its behalf.

Based on the stated facts, you ask the following questions:

QUESTION ONE

Is it permissible under Minnesota's lobbying law for the lobbyists retained by the Service Company to register on behalf of: "Service Company and its Affiliated Entities" or a similar name?

OPINION

Lobbyists retained by the Service Company must register on behalf of each Affiliate whose interests they represent.

When interpreting statutes, the Board must implement the intent of the legislature to the extent that intent can be determined. In the case of Chapter 10A, it has long been recognized by the Board that the intent of the legislature is to provide meaningful disclosure to the public.

This goal is incorporated into the core of the Board's mission, which is "to promote public confidence in state government decision-making through development, administration, and enforcement of disclosure and public financing programs which will ensure public access to and understanding of information filed with the Board".

Meaningful disclosure about lobbying requires that the disclosure be closely linked to the entity whose interests are represented and who hopes to benefit from the lobbyist's efforts to influence public officials. In this case, that entity is the "Affiliate", not the parent company or the Service Company.

The Service Company manages and directs lobbying for the Affiliates. It has no independent legislative or administrative interests in Minnesota. Lobbying in Minnesota, though conducted by the Service Company, is conducted on behalf of the Affiliates; the only entities with a direct interest in the results of the lobbying efforts. Though not controlling in this opinion, the fact that the Affiliates each pay for their own lobbying services adds weight to the Board's conclusion.

Unless the lobbyists register on behalf of each Affiliate, the public will not have the most clear and direct access to information about whose interests are actually being promoted by these lobbyists.

QUESTION TWO

If so, is it proper to disclose the relevant Affiliate(s) as the original source of funds on Schedule C of the Lobbyist Disbursement Report of the designated lobbyist for "Service Company and its Affiliated Entities," in the amounts that each Affiliate reimburses Service Company for lobbying?

OPINION

Disclosing the Affiliates as original sources of funds for lobbying by the Service Company would not resolve the problem of inadequate disclosure, nor would it be consistent with the concept of disclosure of original sources of funds.

An association that is represented by a lobbyist, but uses money from underlying sources to pay for the lobbying discloses those sources, although the lobbyist does not represent the entities that provided the underlying funds. For example, trade associations often use membership dues for lobbying purposes. The lobbyist, however, represents the association, not the individual members who are the source of funds for lobbying. Listing entities on whose individual behalf lobbyists advocate as original sources of funds rather than as represented associations does not accurately reflect the true relationships between the lobbyists and the associations.

QUESTION THREE

If an Affiliate reimburses the Service Company for lobbying in amounts that exceed \$50,000 per calendar year and discloses such payments on Schedule C of the Lobbyist Disbursement Report of the designated lobbyist for "Service Company and its Affiliated Entities", are such payments properly disclosed on the Annual Report of Lobbyist Principal of "Service Company and its Affiliated Entities", a separate Annual Report of Lobbyist Principal filed by the Affiliate making such payments, or both?

OPINION

Although the premise of the question is not completely relevant considering the opinions in response to questions one and two, the Board provides the following guidance with respect to the annual report of lobbyist principal.

If an Affiliate pays the Service Company more than \$500 in a year for the services of lobbyists, or more than \$50,000 in a year for all lobbying, the Affiliate is a lobbyist principal and must file the Annual Report of Lobbyist Principal.

Additionally, because the Service Company is providing much more than the costs of contract lobbyists, each Affiliate should include on its Report of Lobbyist Principal its pro-rata share of the Service Company's overhead and operating expenses related to the lobbying done for the Affiliate.

RELEVANT STATUTES AND RULES

MINNESOTA STATUTES

10A.01 DEFINITIONS

. . .

Subd. 21. **Lobbyist.** (a) "Lobbyist" means an individual:

(1) engaged for pay or other consideration of more than \$3,000 from all sources in any year for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials;

. . .

10A.03 LOBBYIST REGISTRATION.

Subdivision 1. **First registration.** A lobbyist must file a registration form with the board within five days after becoming a lobbyist or being engaged by a new individual, association, political subdivision, or public higher education system.

MINNESOTA RULES

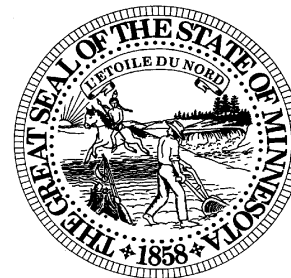
4511.0200 REGISTRATION.

Subpart 1. **Separate registration required for each entity.** A lobbyist who lobbies on behalf of more than one individual, association, political subdivision, or public higher education system shall register separately for each separate entity. Members or affiliates of an association represented by a lobbyist are not separate entities for the purposes of this requirement.

. . .

Minnesota

Campaign Finance and Public Disclosure Board



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under Minn. Stat. § 10A.02, subd. 12(b)**

SUMMARY

A presentation item that is in the form of a decorative axe is a plaque with a resale value of five dollars or less and, thus, is exempt from the gift prohibition of Minnesota Statutes Section 10A.071.

FACTS

As the representative of a public official, you ask the Campaign Finance and Public Disclosure Board ("Board") for an advisory opinion based on the following facts.

1. The Minnesota Fire Chiefs Association, a lobbyist principal, periodically presents public officials and others with a "Distinguished Service Award".
2. This award is memorialized by a plaque in the form of an engraved fire axe.
3. The axe has mounted on its face an engraved fire badge medallion. The badge medallion is engraved with the name of the recipient.
4. An engraved plate memorializing the reason for the award is attached to the handle of the axe with small nails.
5. The requester believes that the item is useless except as decoration and that it has value only to the recipient as a commendation.

RELEVANT STATUTES AND RULES

MINNESOTA STATUTES

10A.071 CERTAIN GIFTS BY LOBBYISTS AND PRINCIPALS PROHIBITED.

Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this section.

(b) "Gift" means money, real or personal property, a service, a loan, a forbearance or forgiveness of indebtedness, or a promise of future employment, that is given and received without the giver receiving consideration of equal or greater value in return.

(c) "Official" means a public official, an employee of the legislature, a judge, or a local official of a metropolitan governmental unit.

Subd. 2. **Prohibition.** A lobbyist or principal may not give a gift or request another to give a gift to an official. An official may not accept a gift from a lobbyist or principal.

Subd. 3. **Exceptions.** (a) The prohibitions in this section do not apply if the gift is:

. . .

(4) a plaque with a resale value of \$5 or less;

MINNESOTA RULES

4512.0100 DEFINITIONS.

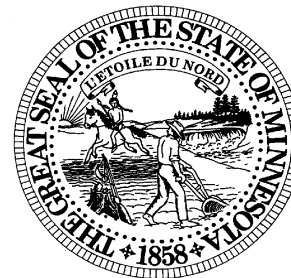
Subpart 1. **Scope.** The definitions in this part apply to this chapter and Minnesota Statutes, section 10A.071. The definitions in chapter 4501 and in Minnesota Statutes, chapter 10A, apply to this chapter.

. . .

Subp. 5. **Plaque or similar memento.** "Plaque or similar memento" means a decorative item with an inscription recognizing an individual for an accomplishment.

Minnesota

*Campaign Finance and
Public Disclosure Board*



THIS ADVISORY OPINION IS PUBLIC DATA
pursuant to a consent for release of information signed by the requestor

Advisory Opinion 415

Issued to:

Sarah Duniway
Gray, Plant, Mooty, Mooty & Bennett, P.A.
500 IDS Center
80 South Eighth Street
Minneapolis, MN 55402

SUMMARY

A contribution to a fund established to support a candidate's participation in a recount of ballots affecting that candidate's election is a noncampaign disbursement under Minnesota Statutes Section 10A.01, subd. 26(22).

FACTS

As the representative of the Dayton Transition fund, d/b/a/ the Dayton Recount Fund, you ask the Campaign Finance and Public Disclosure Board ("Board") for an advisory opinion based on the following facts, which you have provided.

1. The Dayton Transition Fund ("the Corporation") is a Minnesota nonprofit corporation registered with the Internal Revenue Service as a "political organization" under Section 527 or the Internal Revenue Code. The Transition Fund is not registered with the Board as a political committee.
2. The Corporation does business as the Dayton Recount Fund ("the Recount Fund" for the purposes of monitoring the recount of ballots for the Minnesota 2010 gubernatorial election and representing the interests of voters who cast their ballots for Mark Dayton.
3. The Recount Fund wishes to raise money for its efforts by soliciting and accepting contributions from political committees and from those associations who spend through political funds that are registered with the Board.
4. The Recount Fund seeks Board advice to guide its conduct since it would not wish to solicit or accept contributions from the subject donors if those donations are prohibited.

QUESTION

May a political committee or an association spending its money through a political fund donate money to the Recount Fund?

OPINION

Statutory Analysis

This advisory opinion request involves questions governed by both Chapter 10A, which is administered by the Board and Chapter 211B, which is not administered by any agency, but is enforced by the Office of Administrative Hearings through a statutory complaint process.

The Board has noted on many occasions that Minnesota Statutes Section 211B.12 is the primary source for determining the legal uses of money collected for “political purposes”. “Political purposes” is defined in §211B.01, subd. 6, as “intended or done to influence, directly or indirectly, voting at a primary or general election”.

Section 211B.12 prohibits the use of money collected for political purposes unless one of two conditions are met. The statute says:

“Use of money collected for political purposes is prohibited unless the use [1] is reasonably related to the conduct of election campaigns, or [2] is a noncampaign disbursement as defined in Section 10A.01, subdivision 26.”

Minnesota Statutes Section 10A.01, subd. 26, lists specified noncampaign disbursements and includes “other purchases or payments specified in board rules or advisory opinions as being for any purpose other than to influence the nomination or election of a candidate or to promote or defeat a ballot question”.

Section 211B.12 does not restrict its application to only certain types of entities. Rather, it applies to all money raised for political purposes without regard to the type of entity raising or spending the money.

Under the statutory language, the Board’s role is to provide the flexibility of recognizing noncampaign disbursements not specifically listed in the statute through the issuance of advisory opinions. Once recognized by the Board, these noncampaign disbursements become legal expenditures under §211B.12.

Conclusion

Minnesota Statutes Section 211B.12 provides that money collected for political purposes may be used for expenses related to “the conduct of election campaigns” or for noncampaign disbursements.

While a recount procedure itself may not be a part of the “election campaign”, it is a part of the election process. When a recount is mandated by statute, as in the present case, the recount may be closely tied to the ultimate success or failure of an election campaign.

RELEVANT STATUTES AND RULES

MINNESOTA STATUTES

10A.01 DEFINITIONS

. . .

Subd. 26. **Noncampaign disbursement.** "Noncampaign disbursement" means a purchase or payment of money or anything of value made, or an advance of credit incurred, or a donation in-kind received, by a principal campaign committee for any of the following purposes:

. . .

(22) other purchases or payments specified in board rules or advisory opinions as being for any purpose other than to influence the nomination or election of a candidate or to promote or defeat a ballot question; and

211B.12 LEGAL EXPENDITURES

Use of money collected for political purposes is prohibited unless the use is reasonably related to the conduct of election campaigns, or is a noncampaign disbursement as defined in section 10A.01, subdivision 26. . . .