

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

**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 448

SUMMARY

A principal campaign committee is the vehicle for depositing and reporting a loan made to benefit a candidate's campaign. A loan to a principal campaign committee from an individual is subject to the applicable reporting requirements and limits found in Chapter 10A.

Facts

As a representative of a candidate with a registered principal campaign committee, you ask the Campaign Finance and Public Disclosure Board for an advisory opinion on behalf of the candidate based on the following facts:

1. The candidate has filed for a state-level office and will appear on the ballot for that office this year. The candidate wishes to devote his or her full time to the campaign, but does not have the financial resources to campaign full time.
2. An individual who has no role in the candidate's campaign is willing to make a loan to the candidate so that the candidate may campaign full time. The funds for the loan will not come from a corporation or a financial institution. The individual who is willing to make the loan would use only his or her personal funds for the loan.
3. The loan would be made with a written agreement that would provide for repayment of the loan over a set number of years, and a market value interest rate would apply to the loan.
4. The loan agreement would contain the following provisions:
 - a) None of the proceeds of the loan will be used for political purposes in any way;
 - b) The proceeds of the loan will not be intermingled with the candidate's principal campaign committee funds;
 - c) The loan must be repaid from the candidate's personal funds; and
 - d) The intent of the loan is to cover personal living expenses that would ordinarily be covered by the candidate's personal income.
5. For the purposes of issue number 5, the Board may assume that the individual making the loan is aware that providing information on a planned independent expenditure to the candidate, or any agent of the candidate, would defeat the independence of the expenditure.

Issue One

Is the loan subject to any reporting requirements under Minnesota Statutes Chapter 10A?

Opinion One

Yes. The loan is to an individual who is a candidate as defined in Minnesota Statutes section 10A.01, subdivision 10. As required by Minnesota Statutes section 10A.105, subdivision 1, the candidate has formed and has registered a principal campaign committee for the office sought. The principal campaign committee is the mechanism for making and reporting all financial activity related to the candidate's campaign.

Chapter 10A does not distinguish contributions made to the candidate from contributions made to the candidate's principal campaign committee, or provide a way to exempt contributions made directly to the candidate from the reporting requirements. To insure that the reports of the principal campaign committee disclose all contributions made to benefit the campaign, Minnesota Statutes section 10A.15, subdivision 3, provides in part that "[a]ll contributions received by or on behalf of a candidate ... must be deposited in an account designated "Campaign Fund of (name of candidate...)."

Indeed, the compliance requirements of Chapter 10A apply to the candidate, with the principal campaign committee providing the disclosure to ensure that the candidate meets those requirements. For example, the voluntary campaign spending limits apply to the candidate who signs the public subsidy agreement. Minn. Stat. § 10A.25, subd. 1. Further, the contribution limits in Chapter 10A are applied to the candidate for a given office, with the direction that "a candidate must not permit the candidate's principal campaign committee to accept" contributions in excess of those limits. Minn. Stat. § 10A.27, subd. 1. Minnesota Statutes section 10A.20 then specifies the timing and contents of the reports that the candidate's principal campaign committee must file with the Board to disclose those contributions and expenditures.

Therefore, the loan, while made to the candidate, is reportable under Chapter 10A if it is a contribution to the candidate's campaign. The requester states that the loan agreement will provide that none of the loan proceeds will be used for political purposes in any way, and because of this the funds from the loan will not be deposited in the principal campaign committee account. By themselves, these facts could lead to the conclusion that the loan is not a contribution to the candidate's committee. However, the requester's statement stands in contradiction to the stated purpose of the loan. As stated in the facts of the opinion request, the individual who is offering to make the loan is doing so knowing that the funds will be used to allow the candidate to campaign full time. That is the only stated reason the loan is being offered, or would be accepted.

The expected direct result of the loan is to increase the candidate's availability to campaign for office. The Board does not find a way to reconcile that result with the statement that the funds from the loan will not be used for a political purpose. Chapter 10A does not attempt to delineate all the ways in which money is used for a political purpose, but it does define reportable campaign expenditures broadly to include expenditures "...made for or incurred for the purpose of influencing the nomination or election of a candidate...". Minn. Stat. § 10A.01, subd. 9.

With the stated purpose of the loan so clearly tied to the candidate's campaign for office, the Board concludes that the loan is a contribution to the candidate, and if made must be reported by the principal campaign committee as required in Minnesota Statutes section 10A.20, subdivision 3 (e).

If the Board were to recognize a way for individuals to make loans to candidates to benefit the campaign outside of the reporting requirements of Chapter 10A, then the individual making the loan could avoid applicable contribution limits. Additionally the individual making the loan would have anonymity not available to other principal campaign committee contributors. The end result would be a circumvention of the contribution limits and disclosure requirements of Chapter 10A.

Issue Two

Would this loan constitute a contribution from the individual who wishes to make the loan to the candidate or the candidate's principal campaign committee?

Opinion Two

As explained in Issue One, the loan must be reported by the candidate's principal campaign committee. A loan may become a contribution under the circumstances described in Minnesota Statutes, section 10A.01, subdivision 11 (b):

(b) "Contribution" includes a loan or advance of credit to a political committee, political fund, principal campaign committee, or party unit, if the loan or advance of credit is: (1) forgiven; or (2) repaid by an individual or an association other than the political committee, political fund, principal campaign committee, or party unit to which the loan or advance of credit was made. If an advance of credit or a loan is forgiven or repaid as provided in this paragraph, it is a contribution in the year in which the loan or advance of credit was made.

Because a loan may become a contribution, a loan from an individual may not be in an amount greater than the contribution limit for the office sought. Further, the loan may not be endorsed for an amount greater than the applicable contribution limit of the individual who endorses the loan, as provided in Minnesota Statutes section 10A.27, subdivision 8.

Issue Three

Does this loan constitute an approved expenditure on behalf of the candidate?

Opinion Three

No. An approved expenditure is a type of in-kind contribution in which goods or services are purchased by an entity or individual on behalf of the principal campaign committee. Minn. Stat. § 10A.01, subd. 4. As provided in the facts of this opinion the loan will provide funds for the candidate's use.

Issue Four

If the individual who is willing to make the loan has already given the maximum allowed contribution to the candidate's principal campaign committee, would the individual still be allowed to make the loan?

Opinion Four

No. Outstanding loans either made or endorsed by an individual are included in the aggregation of contributions counted towards the contribution limit of the individual, as provided in Minnesota Rules, part 4503.0700, subpart 1.

Issue Five

Is the legality of the loan impacted if the individual making the loan is also a board member of an association that makes independent expenditures in support of the candidate's campaign?

Opinion Five

No. The scenario presented in the request does not suggest that the independent expenditures were discussed with the candidate or any agent of the candidate. Therefore, the scenario does not present any opportunity for actions that would defeat the independence of the expenditures.

Additionally, Minnesota Laws 2018, chapter 119, section 24 (to be codified as Minnesota Statutes section 10A.177) provides that a donation to a candidate from an individual or entity that makes independent expenditures does not by itself compromise independent expenditures made on behalf of the candidate.

Issue Six

Are the answers to any of the prior opinions changed depending on whether the candidate signed or did not sign the public subsidy agreement for the election cycle?

Opinion Six

No. None of the opinions provided are reliant on the candidate signing the public subsidy agreement.

A candidate who does not sign the public subsidy agreement is not limited in the amount of funds donated or loaned to his or her own principal campaign committee, and such a candidate would also be free to endorse a loan from a financial institution to the committee in any amount.

Issued September 12, 2018

/s/ Carolyn Flynn

Carolyn Flynn, Chair
Campaign Finance and Public Disclosure Board

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

**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 449

SUMMARY

An association's advertising policies for accepting political advertisements are not governed by Chapter 10A. Associations should be aware of actions that may result in a prohibited corporate contribution to a candidate's principal campaign committee.

Facts

As a representative of an association that may interact with principal campaign committees, you ask the Campaign Finance and Public Disclosure Board for an advisory opinion based on the following facts:

1. The association is a 501(c)(6) membership-based organization registered as a non-profit corporation in Minnesota.
2. The association produces a bi-monthly print newsletter that is only available to association members. The association also produces a weekly electronic newsletter that is similar in content to the print newsletter, but which is available to individuals who are not members of the association.
3. Members of the association may pay to advertise their products and services in either the print or the electronic version of the newsletter. Advertising is a benefit of association membership, so non-members may not purchase advertisements in either version of the newsletter.
4. Some members of the association are candidates for office at the upcoming election.

Issue One

Is the association required to accept campaign advertisements from non-members, or to accept campaign advertisements that the association deemed to be insulting or derogatory on a personal level?

Opinion One

Not under Chapter 10A. An association's policies for accepting advertisements in its membership publications are not governed by the statutory provisions under the Board's jurisdiction.¹ Nor does Chapter 10A give candidates the right to advertise in a membership newsletter. However, the association should take steps to ensure that the acceptance of advertisements from member candidates does not result in a corporate contribution to the candidate's campaign committee.

The cost to place a campaign advertisement should be determined from a set schedule that applies to all advertisers. If the advertisement rate is lower for candidates than for other advertisers, then the difference between the candidate rate and the rate for the other advertisers represents an in-kind donation from the association to the candidate's committee. The association is a non-profit corporation. Non-profit corporations are generally prohibited from contributing to candidate committees under Minnesota Statutes section 211B.15.

The requester states that the payment of membership dues is required to have access to advertise in the newsletters. If the membership dues were paid with personal funds by an individual, then the access to advertise in the newsletters is an in-kind contribution from that individual to the campaign committee. However, if the membership dues were paid by a corporation, then using the corporate membership for the access needed to advertise in the newsletters is an in-kind contribution from the corporation to the campaign committee that could be prohibited under Minnesota Statutes section 211B.15.

For the association's reference the Board notes that Minnesota Statutes section 211B.05 requires periodicals to identify political advertisements, and also sets standards for advertising rates charged to candidates that advertise in periodicals. The Board has no jurisdiction over Minnesota Statutes section 211B.05, and makes no conclusion as to whether that statute applies to the association's newsletter. Additionally, this opinion does not reflect any analysis of the relationship between political activity and an association's 501(c)(6) tax status.

Issued August 16, 2018

/s/ Carolyn Flynn

Carolyn Flynn, Chair
Campaign Finance and Public Disclosure Board

¹ Minnesota Statutes section 10A.37. Nothing in this chapter may be construed to abridge the right of an association to communicate with its members.

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

**THIS ADVISORY OPINION IS PUBLIC DATA
pursuant to a consent for release of information
provided by the requester**

Issued to: Representative Steve Drazkowski
New House Republican Caucus
327 State Office Building
St. Paul, MN 55155

ADVISORY OPINION 450

SUMMARY

A principal campaign committee may pay for certain expenses related to the operation of a legislative caucus that qualify as non-campaign disbursements under Chapter 10A.

FACTS

As a member of the New House Republican Caucus (NHRC) you request an advisory opinion from the Campaign Finance and Public Disclosure Board based on the following facts that were provided in the letter requesting the advisory opinion and in discussions with Board staff.

1. You are a member of the Minnesota House of Representatives, representing District 21B.
2. You and three other member of the House of Representatives formed the NHRC at the beginning of the 2019 legislative session. The NHRC has been recognized as a legislative caucus by the Speaker of the House. NHRC members have been assigned office space, seating in the House chambers and given the authorization to hire staff and committee assignments based on their membership in the caucus.
3. You are the leader of the NHRC.
4. The Republican Party of Minnesota is the political affiliation of the members of the NHRC.
5. The NHRC will incur certain costs for startup and initial support of the caucus. Not all of these costs will be paid for by the legislature. You seek guidance from the Board on the use of principal campaign committee funds to pay for the costs specified in the advisory opinion request.

6. In particular you ask for guidance on whether the use of principal campaign committee funds to pay for NHRC expenses may be classified as a noncampaign disbursement.

INTRODUCTION

The term “legislative caucus” is not defined in Chapter 10A, and does not appear to be defined in any Minnesota statute. The term is used most often to refer to the organization of members of the legislature, which typically is organized along political party lines. The legislative caucuses elect or appoint members to leadership positions within the caucus, and hire staff to support policy development, provide public education on the issues supported by the caucus, and ultimately support the enactment of the legislative goals of the caucus. The legislature pays caucus staff salaries and extends other administrative support to the caucuses. The legislative caucuses that develop policy and legislation are not registered or regulated by the Board because they are funded with tax dollars, and they are not organized to influence the nomination or election of candidates.

However, prior Board advisory opinions have also used the term “legislative caucus” as a shorthand reference for a political party unit organized within a body of the legislature. In retrospect, the Board’s use of this term was confusing, and requires an explanation. A major or minor political party registered with the Board must at a minimum have a state central committee. A political party may also organize and register additional political party units that in aggregate represent the political party.¹ A major or minor political party may recognize and authorize the registration of a single party unit for each political or geographic area recognized in Chapter 10A.² Critical to this discussion, a political party may also recognize and authorize the registration of one party unit organized within each body of the legislature. Unlike legislative caucuses, the political party units organized for the House and Senate exist to influence the nomination and election of candidates.

Going forward, the Board will use the term “legislative party unit” when discussing a political party unit organized in a legislative body. Prior advisory opinions that use the term “legislative caucus” should be read with the understanding that the reference means a political party unit registered under Chapter 10A.

In this advisory opinion, the Board is asked to provide guidance to members of a newly recognized legislative caucus. The legislature has extended some support to the NHRC, but the caucus has start up and initial operating costs that are not currently funded. The NHRC members wish to develop and promote the legislative policy positions of the caucus and are willing to pay for the expenditures detailed in the advisory opinion request with their principal campaign committee funds if those payments are allowed by Chapter 10A.

¹ Minnesota Statutes section 10A.01, subdivision 29, defines political party as follows: “Political party’ means a major political party or a minor political party. A political party is the aggregate of all its political party units in this state.”

² Minnesota Statutes section 10A.01, subdivision 30, defines political party unit or party unit as follows: “Political party unit’ or ‘party unit’ means the state committee or the party organization within a house of the legislature, congressional district, county, legislative district, municipality, or precinct.”

ISSUE ONE

May members of the NHRC use principal campaign committee funds to pay for signage identifying caucus offices, caucus stationary, and other basic office supplies for the caucus?

OPINION ONE

Yes. In general, money raised for political purposes must be used for expenses related to the conduct of an election campaign or for a noncampaign disbursement listed in Chapter 10A. Minn. Stat. § 211B.12. As discussed above, the NHRC's expenses are not related to the conduct of an election campaign. Consequently, the members of the NHRC may use their principal campaign committee funds for the NHRC expenses only if those expenses qualify as a noncampaign disbursement.

Minnesota Statutes section 10A.01, subdivision 26, provides a list of noncampaign disbursements that may be paid for with principal campaign committee funds. In particular, this statute provides that incumbent legislators may use principal campaign committee funds for the following expense:

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

The category of costs related to serving in public office includes those costs that would not occur without membership in the legislature and that are ordinary and reasonable expenses incurred in order to better perform the tasks of a legislator.³

Signage for a member's office identifying the member as part of the NHRC, stationery printed with the legislator's NHRC membership, and basic office supplies are all expenses that NHRC members would not have incurred if they were not members of the legislature. These expenses also are ordinary and reasonable expenses incurred to help the member better perform the tasks of a legislator. These expenses therefore may be paid with principal campaign committee funds as a cost of serving in office.

ISSUE TWO

May members of the NHRC use principal campaign committee funds to pay for an NHRC website, social media accounts, telephone expenses, and other communication costs related to supplying NHRC's legislative message to constituents and supporters?

OPINION TWO

Yes, with restrictions. The specified expenses of establishing and operating a website and other communications that promote the legislative positions of the NHRC are not the usual operating costs for a legislator. Consequently, they cannot be paid for as costs of serving in office. In addition, the communications will reach, and are intended to reach, individuals who do not reside in the legislative districts of NHRC members. The broad audience for the

³ See Advisory Opinions 255 and 314.

communications precludes categorizing their costs as services for a constituent under Minnesota Statutes section 10A.01, subdivision 29, paragraph (6).

However, Minnesota Statutes section 10A.01, subdivision 26, paragraph (9), provides that principal campaign committee funds may be used for the following expenses:

(9) payment of expenses incurred by elected or appointed leaders of a legislative caucus in carrying out their leadership responsibilities.

As stated earlier, the term “legislative caucus” is not defined in Chapter 10A. However, there is no reason to believe that this noncampaign disbursement category is not available to the leadership of the NHRC as a legislative caucus recognized by the Speaker of the House. Among other duties, legislative caucus leadership is responsible for providing public education on issues important to the caucus and promoting the legislative positions of the caucus with the ultimate goal of enacting those positions into law. A website, social media posts, and other related communications all are methods that the NHRC leadership can use to accomplish those responsibilities. The NHRC leadership therefore may use principal campaign committee funds to pay expenses that they incur for a website, social media, and other related communications used to fulfill their responsibility to promote the legislative agenda of the NHRC.

The NHRC will need to monitor carefully its communications to ensure that they relate only to the legislative positions and message of the caucus.

ISSUE THREE

May members of the NHRC use principal campaign committee funds to pay for other start-up costs, such as securing legal counsel on the creation and operation of the new caucus?

OPINION THREE

Yes, with restrictions. Legal counsel for the legislative caucus is not a usual expenditure for a legislator and therefore could not be paid for as a cost of serving in office. However, paying for legal advice to successfully launch and operate the NHRC may be seen as a responsibility of caucus leadership. Such costs therefore may be paid for with the principal campaign committee funds of NRHC members in leadership positions.

Issued February 6, 2019

/s/ Margaret Leppik

Margaret Leppik, Chair
Campaign Finance and Public Disclosure Board