MINNESOTA STATE ETHICAL PRACTICES BOARD

41 STATE OFFICE BUILDING

SAINT PAUL, MINNESOTA 55155

612-296-5148

ADVISORY OPINIONS

JULY 1, 1979 -- SEPTEMBER 30, 1980

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TABLE OF CONTENTS

Issued to:

Mr. M. E. Smedsrud, President
Communicating For Agriculture
P. O. Box 677
Fergus Falls, MN 56537

Approved:

October 26, 1979

RE: Employment Practices - Bona Fide Occupational Qualification

ADVISORY OPINION #58

SUMMARY

58. Communicating For Agriculture is a unique, non-partisan agricultural related lobbying organization which, on the facts presented the Board, has demonstrated a bona fide occupational qualification for its directors, officers, management and lobbyists to prohibit those persons from seeking partisan political office.

TEXT

You have requested an advisory opinion from the Minnesota Ethical Practices Board based upon the following:

FACTS

You are president of a small, non-partisan lobbying organization. You and your organization desire to adopt a personnel policy prohibiting certain persons who are directors, officers, managers and lobbyists from seeking and holding partisan political office.

QUESTION I

Does candidacy for public office constitute political activity under *Minn. Stat.* 10A.20, subd. 11?

OPINION

Minn. Stat. 10A.20, subd. 11 provides in part as follows:

> No person or association shall engage in economic reprisals or threaten loss of employment or physical coercion against any person or association because of that person's or association's political contributions or political activity.

(Emphasis added). Although it is possible to view the above-quoted section as applying only to the "political activity" regulated by Chapter 10A, the literal language of section 10A.20, subd. 11 does not support such a reading. In fact, the placement of the phrase "political contributions" (the area which Chapter 10A primarily regulates) together with the phrase "political activity" indicates that section 10A.20, subd. 11 was intended to apply to activities outside of the purview of Chapter 10A. Similarly, there is no basis in the literal language of section 10A.20, subd. 11 for distinguishing between working with a political campaign, for example, and being a candidate for public office. Thus, it is our opinion that

the phrase "political activity" includes being a candidate for public office.1/

This reading of section 10A.20, subd. 11 is confirmed by the use of phrase "political activity" in two other contexts. The phrase "political activity" is utilized in *Minn. Stat.* 43.28. That section regulates the "political activities" which a civil service employee may engage in, prohibiting certain political activities which are engaged in or might be engaged in during working hours. The section, however, specifically limits any political subdivision from imposing or enforcing "any additional limitations on the political activities of its employees." Under section 43.28 a civil service employee must take a leave of absence if campaigning will interfere with his or her work but is permitted to run for public office. Thus, when section 43.28 refers to the "political activities" of civil service employees it assumes the phrase includes being a candidate for public office.

Opinions of the Minnesota Supreme Court also indicate that the Court views the term political activity as including running for political office. In State ex rel. Turen v. Patterson, ____ Minn. ____, 48 N.W. 2d 547, 576 (1951), the Supreme Court, in interpreting an earlier version of *Minn. Stat.* 43.28 noted that:

> It /§ 43.28/ can have only one purpose, and that is to obviate the evils which necessarily follow when officers or employees in the classified service of the State are permitted to engage in political activity to the extent of running for office.

(Emphasis added). Similarly, the Supreme Court in Johnson v. State of Minnesota, Civil Service Department, ____ Minn. ____, 157 N.W.2d 747, 751 (1968), assumed that the term "political activities" included running for political office. See also Navarro v. Leu, 469 F. Supp. 832 (1979); Counsel 11, American Federation of State, County and Municipal Employees, AFL-CIO v. Michigan Civil Service Commission, ____ Mich. Ap. ____, 274 N.W.2d 804, 808 (1978).

QUESTION II

May a non-partisan public interest lobbying organization prohibit its officers, directors and lobbyists from being candidates for partisan political office?

OPINION

Although the first sentence of section 10A.20, subd. 11 is a blanket prohibition against economic reprisals or threatened loss of employment resulting from a person's political contributions or political activity, a single exception is provided. Section 10A.20, subd. 11 does not apply to "compensation for employment or loss of employment when the political affiliation or viewpoints of the employee is a bona fide occupational qualification of the employment." (emphasis added.)

The phrase "bona fide occupational qualification" is a term of art which evidently originated in Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e,

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1/ In an early case heard by the then Minnesota Ethics Commission, political activity under section 10A.20, subd. 11 was deemed to include mere membership in the Communist Party. See Case No. H-0002.

et seq.[2] The phrase also appears in the Age Discrimination in Employment Act of 1976, 29 U.S.C. §621, et seq. It is apparently from these sources that the Minnesota legislature borrowed the "bona fide occupational qualification" phrase which is now part of §10A.20, subd. 11. Thus, in interpreting the meaning of the phrase, it is appropriate to consider the manner in which the federal legislation has been construed.

Courts have been virtually unanimous in concluding that the "bona fide occupational qualification" language of the federal laws "provides only the narrowest of exceptions to the general rule" of the statutes. Dothard v. Rawlinson, 433 U.S. 321, 333 (1977). This view si based largely upon the wording of the statutes themselves and upon their remedial nature. The language of section 10A.20, subd. 11, and its remedial nature, lead us to the conclusion that the bona fide occupational qualification exception should also be narrowly construed here, and that the exception must not be allowed to swallow the rule against economic reprisals or loss of employment. Cf. Weeks v. Southern Bell Telephone & Telegraph Co., 408 F.2d 228, 235 (5th Cir. 1969); Houghton v. McDonnell-Douglas Corp., 533 F.2d 561, 564 (8th Cir. 1977).

In addition, the burden of proving that a particular employment practice fits within the narrow ambit of the exception is upon the employer who asserts the existence of a bona fide occupational qualification. See Weeks v. Southern Bell Telephone & Telegraph Co., supra, at 232.

The federal cases also suggest criteria for determining when this burden has been met. The touchstone of our inquiry is "business necessity." Dothard v. Rawlinson, supra, at 433 U.S. 331, n. 14; Griggs v. Duke Power Company, 401 U.S. 424, 431 (1971). An employment practice will constitute a bona fide occupational qualification, necessary for the conduct of an employer's business, if any of three questions can be answered in the affirmative. Adapted to the context of section 10A.20, and of an employee who runs for political office, those questions are:

(1) Would the essence of the institution and its goals be undermined by retaining an employee who runs for political office?

(2) Is there a factual basis for believing that all or substantially all employees who become candidates would be unable to perform efficiently the duties of the job?

(3) Would any personnel adjustments caused by retaining employees who become candidates substantially impinge on the efficient and effective operation of the facility?

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[2] 42 U.S.C. § 2000e-2(e) (1) provides in part that:

> (e) Notwithstanding any other provision of this subchapter, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, ... on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, ...

(Emphasis added.)

Applying these criteria to the question posed by Communicating For Agriculture, it is our conclusion that, on the facts presented, a bona fide occupational qualification is shown.

Communicating For Agriculture (CA) states that it is a non-partisan public interest lobbying organization. Its primary functions are to promote agricultural education and to lobby for the preservation of family farms, the improvement of rural education and rural health care, and reform of estate tax laws. It is CA's purpose to remain objective and impartial, and to avoid any appearance of partisan affiliation. In view of the small size of its staff, CA is concerned that an employee who runs for partisan political office may cause the organization to be identified with a particular political party. Accordingly, CA is considering adoption of a policy requiring directors and at least some employees to resign before becoming partisan candidates for state or national office.

We assume that the proposed policy would apply only to directors, officers, management, lobbyists and others who actually represent CA before the public and that it will not apply, for example, to secretarial or clerical employees. We also assume and urge that CA's employees will be informed of the policy and that new employees will be so informed at the time they are hired.

We believe that, on the facts presented, the essence of the organization and its goals would be undermined if CA were required to retain a director, officer, lobbyist or other public representative who runs for partisan office. The credibility and effectiveness of a public interest lobbying organization are absolutely dependent upon both its ability to remain non-partisan and, no less important, its ability to be perceived as non-partisan. Once identified with a political party, such an organization would be immediately suspect in the eyes of much of its intended audience, and its effectiveness would be lost. The risk of such identification is heightened in this case by the small size of CA's staff. Under these circumstances, we believe there is a substantial likelihood that the party affiliation of even a single candidate might be attributed to CA itself, and that this would undermine the essence of the organization and its goals. Accordingly, we conclude that a requirement of non-candidacy is a bona fide occupational qualification in the factual context described by CA, and we need not address the alternative criteria suggested by the federal decisions.

This is not to suggest that CA could not adopt a less severe approach, such as a mandatory leave-of-absence policy, for employees who become candidates. See, e.g., *Minn. Stat.* 43.28, subd. 2 (1978), concerning classified state employees. On the facts stated, however, we cannot say that the policy proposed by CA is prohibited by *Minn. Stat.* 10A.20, subd. 11 (1978).

Issued to:

Approved:

Ms. Allene D. Evans
Broeker, Hartfeldt, Hedges & Grant
2850 Metro Drive, Suite 800
Minneapolis, MN 55420

August 24, 1979

RE: Reporting Legal Fees, Paralegal and Secretarial Expenses

ADVISORY OPINION #59

SUMMARY

59. A lawyer lobbyist is not required to report any portion of a legal fee which is considered personal compensation for services rendered to a client. Secondly, a lobbyist is required to report a prorata portion of secretarial and paralegal time of a lobbyist support staff which is directly related to assisting the lobbyist in his or her lobbying activities.

TEXT

You have requested an advisory opinion from the Ethical Practices Board based upon the following:

FACTS

You are a lawyer in a law firm which has a number of clients who are represented by attorneys in the firm. You ask the following questions:

"Various attorneys of this firm are registered as lobbyists and provide professional legal services to clients, a portion of which may be deemed by the Board to be lobbying under state law. We are particularly concerned with the language in 9 MCAR § 1.0204A.3.c. which defines fees and allowances as follows:

> 'This category shall include disbursements for consulting fees, or other fees, for services done or to be done, as well as expenses incurred in rendering such services . . ..'

"The professional legal fees we receive are paid to the partnership of the law firm. A portion of these fees are paid as salary to individuals registered as lobbyists. We understand that this portion of the fee is not required to be disclosed by Minnesota State Ethical Practices Board Advisory Opinion No. 38. However, another portion of the fee is distributed to the partners of the firm who are non-salaried lawyers. We seek an advisory opinion as to whether this portion of professional legal fees must be disclosed and if so, the manner in which these fees must be disclosed.

"We also seek an advisory opinion as to whether a prorata portion of secretarial and other non-registered lobbyist support staff salaries are reportable insofar as they represent time spent in assisting registered lobbyist attorneys in preparing reports and material used in lobbying. If a salary proration is required, we seek a further advisory opinion as to the manner of reporting to be used."

OPINION

Pertinent Statutory and Rule Authority: *Minn. Stat.* 10A.03, 10A.04, subd. 3, subd. 4, and 9MCAR § 1.0204A.4.a.(1), 9MCAR § 1.0204A.3.e, 9MCAR § 1.0204A.3.i.

In the opinion of the Board professional legal fees paid to the partnership by clients for lobbying activities by a lawyer lobbyist are not to be disclosed when a portion of the fee is personal compensation for the lobbyist. A lobbyist report shall not contain a portion of the fee paid to the partners. This position is consistent with Advisory Opinion #38 as well as the Board's interpration of *Minn. Stat.* 10A.04, subd. 4a which contains no clear categorical disclosure requirement for personal compensation.

9MCAR § 1.0204A.3.i. states: Other disbursements. This category shall include a reasonable estimate of a prorata of compensation paid clerical employees incurred for the purpose of lobbying if not reported in categories (a)-(h). The compensation paid to support staff, such as a secretary or a paralegal assistant, who directly assists the registered lobbyist in preparing lobbying materials, is a reportable lobbying disbursement. A reasonable estimate of the compensation can be determined by establishing an hourly, weekly, or if appropriate, monthly rate of pay, which would facilitate the partnership recordkeeping for reporting such expenses on the quarterly report.

Issued to:

Approved:

Senator Roger Strand, Chairman
7th Congressional District DFL Senate Caucus
24 State Capitol
St. Paul, MN 55155

January 9, 1980

RE: Allocating Expenditures and Aggregating Contributions

ADVISORY OPINION #60

SUMMARY

60. The 7th Congressional District DFL Senate Caucus Committee is not a subdivision of a political party as defined by *Minn. Stat.* 10A.27, subd. 4, and Rule 9MCAR 1.0017, therefore the Committee is considered a political committee, other than a political party committee. The treasurer of the Committee shall allocate expenditures on behalf of the officeholders and candidates on a reasonable cost basis and report the allocation to the candidate and/or the treasurer of his principal campaign committee. Contributions from the same source to the 7th Congressional District DFL Senate Caucus Committee and to the officeholders' separate principal campaign committees shall not be aggregated together to determine the applicable contribution limit as defined by *Minn. Stat.* 10A.27, subd. 1.

FACTS

You are the chairman of the 7th Congressional District DFL Senate Caucus Committee which we assume is composed of DFL State Senators in the 7th Congressional District. We understand the purpose of your committee to be in election and non-election years to raise and spend funds to be used to prepare constituent service materials and to raise and spend funds to be used on behalf of the Senators who belong. As such you desire the Board to answer three questions related to reporting requirements.

1. Is the 7th District DFL Senate Caucus a political party subdivision or is it an independent political committee in itself?

2. Do the expenses of the 7th District DFL Senate Caucus have to be allocated to those individual candidates or their committees who receive contributions from the 7th District DFL Senate Caucus?

3. Do contributions to the 7th District DFL Senate Caucus have to be aggregated by individual candidates or his or her committee when that candidate or committee receives a contribution from the same source making a contribution to the 7th District DFL Senate Caucus?

OPINION

1. In the opinion of the Board, the 7th Congressional DFL Senate Caucus Committee is not a part of the party organization as defined by *Minn. Stat.* 10A.27, subd. 4, which defines a political party as "the aggregate of the party organization within each house of the legislature, the state party organization, and the party organization within congressional districts, counties, legislative

districts, municipalities, and precincts." There currently is registered a political party entity known as the 7th Congressional DFL Committee, which meets the statutory geographical test established in the law. In addition to the statutory definition, the Board has adopted a rule, 9MCAR 1.0017, which further delineates the political party definition by finding that "For purposes of determining an aggregate political party contribution limit, the organization of a political party does not include a political party ward organization, a social club of a political party in a congressional district, legislative district, municipality or precinct, an auxiliary committee of a political party unit defined by *Minn. Stat.* 10A.27, subd. 4, or any association which uses a political party name and is not listed in *Minn. Stat.* 10A.27, subd. 4." In the opinion of the Board, the DFL Senate District Caucus Committee is not a political party committee. It is however a political committee as defined in Chapter 10A, subd. 15, and any contributions it makes to candidates or expenditures it makes on behalf of candidates would be in addition to any political party committee contributions or approved expenditures.

2. Because the activities of the Committee and its membership are presumably for furthering the nomination or election of their candidacy, and must be considered having the approval of the candidate and the candidate's principal campaign committee, the Board concludes all expenditures on behalf of the Committee shall be allocated within the reporting period on a reasonable cost basis (*Minn. Stat.* 10A.22, subd. 5) to the principal campaign committees of the officeholders and candidates who approved the expenses. *Minn. Stat.* 10A.19, subd. 1 requires a candidate to form a single principal campaign committee. *Minn. Stat.* 10A.25, subd. 2 requires candidates who accept public financing funds to adhere to certain expenditure limits. In the Board's opinion, to allow a group of candidates or officeholders to form a committee, raise funds and not allocate those expenditures to the candidate's own principal campaign committee would be contrary to the purpose and intent of the law to require all expenditures to be reported to the Board and the public through a candidate's principal campaign committee.

3. Unless a contribution to the 7th Congressional District DFL Senate Caucus Committee is earmarked to a specific candidate, there is no statutory requirement to aggregate contributions from same source, given separately to the candidate's principal campaign committee and the 7th Congressional District DFL Senate Caucus Committee, to determine permissible contribution limit as set forth in *Minn. Stat.* 10A.27, subd. 1, or subd. 2.

Issued to:

Bruce Kasden, Mayor
City Hall
Moose Lake, MN 55767

Approved:

March 7, 1980

RE: Constituent Services - Local Officeholder Candidate

ADVISORY OPINION #61

SUMMARY

61. The payments for the newspaper column or postcards will not be considered a campaign expenditure until after sine die adjournment of the legislature in an election year.

You have requested an advisory opinion from the Ethical Practices Board based upon the following:

FACTS

You have registered a principal campaign committee for state senate with the Board. As Mayor of Moose Lake you are given a free newspaper column. You then ask the following questions:

(1) Is it permissible for you to write a column, "Mayor's Minutes," in the Moose Lake Star-Gazette while you are campaigning for the State Senate?

(2) Is it permissible for you to issue free postcards to constituents soliciting their views on issues?

OPINION

Pertinent Statutory Authority

Minn. Stat. 10A.01, subd. 10; 10A.01, subd. 10c - (f), (g); Rule 9MCAR 1.0029 E and F.

In the opinion of the Board since you have already registered a principal campaign committee for the State Senate, there is a clear indication you intend to run for election in 1980. After adjournment sine die of the legislature you must either pay for the newspaper column at regular advertising rates and report those expenses as a campaign expenditure, or the Board will consider the column an in kind contribution from the newspaper to your campaign committee as set forth in Ethical Practices Board Rule 9MCAR 1.0019E.*

In response to your second question, the Board considers the issuance of the postcards to be constituent service through sine die adjournment of the legislature. Thereafter any such payments for the cards or newspaper columns must be reported as a campaign expenditure as set forth in Rule 9MCAR 1.0029C so long as you are a candidate for the State Senate. Those expenditures are similar to newsletters and voter surveys distrubted by incumbent legislators to their constituents which, if distributed after adjournment sine die of the legislature, must be reported as campaign expenditures.

*The Board, at its meeting on September 19, 1980, voted 6-0 to amend this advisory opinion to call attention to *Minn. Stat.* 210A.34 which prohibits corporate contributions to candidates.

Issued to:

Representative Ray Welker
Route 5, Box 30AB
Montevideo, MN 56265

Approved:

March 7, 1980

RE: CETA Office Rental

ADVISORY OPINION #62

SUMMARY

62. A representative who rents an office to CETA program is not required to file a Potential Conflict of Interest Notice with the Ethical Practices Board since in no case would the requirements of the law be met to compel such a filing.

You have requested an advisory opinion from the Ethical Practices Board based upon the following:

FACTS

You are a State Representative. You and your wife own a commercial building in Montevideo, Minnesota. CETA offices have rented space in the building since prior to your entering the legislature. At the end of February 1980, the CETA office lease had expired and the offices have moved. You then ask the following question:

> Are you required to file a Notice of Potential Conflict of Interest in accordance with *Minn. Stat.* 10A.07 because you have rented office space to a CETA program?

OPINION

Pertinent Statutory Authority

Minn. Stat. 10A.07, subd. 1

In the opinion of the Board you are under no statutory requirement to file a Notice of Potential Conflict of Interest even though you and your wife own a commercial building in which the CETA program has rented an office. *Minn. Stat.* 10A.07, subd. 1 requires a state public official to file a Notice of Potential Conflict of Interest if the public official is required to take an action which would substantially affect the public official's financial interests or those of a business with which he is associated. In your circumstance an action would be to vote on a bill which affected your financial interests. As a legislator you are not required to vote on any CETA appropriations because the funds are authorized by Congressional appropriation and issued to county, municipal or non-profit organizations directly. These local elements act as contract administrators. You, as a legislator, are never required to vote on a CETA program authorization, therefore you have not met the statutory test for filing a Potential Conflict of Interest Notice.

Issued to:

Mr. Denis Wadley
Vice President (State Board)
Americans For Democratic Action
Minnesota Chapter
P. O. Box 19288
Minneapolis, MN 55419

Approved:

August 1, 1980

RE: Sample Ballot

ADVISORY OPINION #63

SUMMARY

63. A candidate's appearance at a pre-endorsement interview, standing alone, should not be construed as a "request" or "suggestion" (*Minn. Stat.* 10A.01, subd. 10) that Americans For Democratic Action (ADA) make an expenditure on behalf of the candidate, however, such appearance does set in motion the application of *Minn. Stat.* 10A.17, subd. 2, when and if, the ADA decides to prepare and distribute a sample ballot on behalf of candidates.

ADA must request written authorization for expenditures over $20 from appropriate treasurers before spending money to prepare and distribute sample ballots on behalf of candidates who have screened before ADA. Should written authorization be granted, then ADA reports the sample ballot expenditure as an approved expenditure on behalf of the candidate (*Minn. Stat.* 10A.01, subd. 10). If written authorization is expressly denied, then the expenditure would be treated as an independent expenditure (*Minn. Stat.* 10A.17, subd. 5).

FACTS

Americans For Democratic Action (ADA) is a non-partisan liberal organization which supports selected candidates for elected office. As part of this process, ADA screens and endorses candidates, and distributes to the general public sample ballots supporting those candidates it endorses. ADA selects the races in which it will make endorsements, and ordinarily asks every candidate for an office to participate in the pre-endorsement screening process. ADA does not request a candidate's consent to its statements or literature, and does not work with the candidate's campaign committee, but instead determines for itself the type and extent of support it will provide.

QUESTION

How should the expenses involved in printing and distributing sample ballots be treated under the campaign finance provisions of the Ethics In Government Act, *Minn. Stat.* Ch. 10A (1978)?

OPINION

The sample ballots circulated by ADA are clearly intended to influence the nomination or election of particular candidates. The cost of printing and distributing these sample ballots is therefore a "campaign expenditure" within the meaning of *Minn. Stat.* 10A.01, subd. 10 (1978).

The question presented is whether these campaign expenditures are subject to the contribution and expenditure limits of Chapter 10A. That chapter, of course, limits the amount which an individual or organization may contribute to a candidate. *Minn. Stat.* 10A.27. Although, to some degree, such contribution limits necessarily restrict contributors' rights of expression and association, this restriction is justified by the need to prevent the potentially coercive influence of large financial contributions upon candidates' positions and actions. Of equal concern is the appearance of corruption stemming from the opportunities for abuse inherent in very large contributions, a perception corrosive to public confidence in our system of representative government. Buckley v. Valeo, 424 U.S. 1, 25-29 (1976). Similarly, candidates who accept public campaign financing are subject to limitations upon the total amount they may expend and the total amount of contributions they may accept. *Minn. Stats.* 10A.25, 10A.32 (1978). We believe the importance of these limitations is well established.

If contribution and expenditure ceilings are to have meaning, however, they must be free from loopholes which invite their circumvention. Such limitations would be impotent if they could be avoided by the simple expedient of having supporters outside the campaign organization pay directly for campaign literature, advertisements or other aspects of a candidate's campaign. To prevent such circumvention of the limits, the Minnesota statutes, like their federal counterparts, were written to identify third-party expenditures which are properly imputable to the candidate, and to count those expenditures toward the candidate's contribution and expenditure limits.

While this principle is clear, it is not self-implementing; its application requires the drawing of difficult, but unavoidable, distinctions. The purpose is to identify those expenditures which have a sufficient nexus to the candidate that they should be imputed to him or her. The Minnesota statutes do this by distinguishing between "approved expenditures," which, while made by persons outside the campaign organization, are counted toward a candidate's limits, *Minn. Stats.* 10A.01, subd. 10a; 10A.25; 10A.27 and 10A.32; and "independent expenditures," which are not counted toward such limits. *Minn. Stat.* 10A.01, subd. 10b. An approved expenditure is an expenditure made "with the authorization or expressed or implied consent of, or in cooperation or in concert with, or at the request or suggestion of /a/ candidate, his principal campaign committee or his agent," *Minn. Stat.* 10A.01, subd. 10a, while an independent expenditure is an expenditure expressly advocating the election or defeat of a candidate which is made "without the express or implied consent, authorization, or cooperation" of, and not "in concert with or at the request or suggestion of," a candidate or the candidate's agent or principal campaign committee. *Minn. Stat.* 10A.01, subd. 10b.

This distinction is precisely parallel to that drawn by the language of former federal statutes approved in Buckley v. Valeo, supra. Under those provisions, expenditures which were "authorized or requested" by a candidate or the candidate's agent or authorized committee, were treated as contributions to, and expenditures by, the candidate. 18 U.S.C. § 608(C(2) (B) 1970 ed., Supp. IV). In Buckley v. Valeo, supra, 424 U.S. at 47, the United States Supreme Court looked to the legislative history for guidance in distinguishing such "authorized or requested" expenditures from independent expenditures. The Court's opinion indicates that an expenditure prearranged or coordinated with a candidate, or made with the candidate's consent or cooperation, is to be treated as a contribution subject to the federal contribution limits. The Court quoted the Senate Report on the legislation for an example illustrating this distinction:

"/A/ person might purchase billboard advertisements endorsing a candidate. If he does so completely on his own, and not at the request or suggestion of the candidate or his agent's /sic/ that would constitute an 'independent expenditure on behalf of a candidate' under section 614(c) of the bill. The person making the expenditure would have to report it as such."

"However, if the advertisement was placed in cooperation with the candidate's campaign organization, then the amount would constitute a gift by the supporter and an expenditure by the candidate -- just as if there had been a direct contribution enabling the candidate to place the advertisement himself. It would be so reported by both."

Buckley v. Valeo, supra, 424 U.S. at 47, n. 53, quoting S. Rep. No. 93-689, at 18 (1974), U.S. Code Cong. & Admin. News 1974, at 5604.

Further guidance can be found in federal provisions adopted in light of Buckley, which define an "independent expenditure" as one not made at the request or suggestion of, or in concert with, or in cooperation or consultation with, the candidate or the candidate's agent or committee. 2 U.S.C. § 431(p). An expenditure is not "independent," under these statutes, if it involves any prior arrangement, coordination or direction by the candidate or the candidate's agent, 11 C.F.R. § 109.1(b) (4) (i). Any expenditure made on the basis of information about the candidate's needs, plans or projects is presumed to be an authorized expenditure if the information was supplied by the candidate or the candidate's agent "with a view toward having an expenditure made." Id.

With these criteria in mind, we turn to the situation you describe. Are the expenditures made by ADA, to distribute sample ballots to the general public, "approved expenditures" within the meaning of *Minn. Stat.* 10A.01, subd. 10a? Although other elements of the statutory definition may also be applicable, we believe the question, in essence, is whether the expenditures can be said to be made at the candidate's "request or suggestion." § 10A.01, subd. 10a.

This question necessarily involves a factual determination which may vary from one instance to the next. For example, if ADA makes its endorsement and distributes its sample ballot supporting a candidate without any contact whatever with the candidate or the candidate's campaign organization or agents, then the expenditure will be an independent expenditure. In contrast, if the sample ballot is prepared or distributed in concert with the candidate's campaign organization -- e.g., if it is written, printed, or distributed by the candidate's committee, or if it is circulated in precincts specifically requested by the candidate -- then the expenditure would in all likelihood be an approved expenditure attributable to the candidate.

The case you posit is more difficult. As we understand the facts, the only contact between ADA and the candidate's campaign typically consists of the candidate's appearance at a pre-endorsement screening interview, to which all candidates are invited. We do not believe the candidate's mere appearance at a screening interview, standing alone, should be construed as a "request" or "suggestion" that ADA expend money on the candidate's behalf, in the absence of any further indication that such a request or suggestion is intended. We do believe, however, that a candidate's appearance at such a screening interview is sufficient to set in motion the application of *Minn. Stat.* 10A.17. That provision requires that before

spending more than $20 for any expenditure approved by a candidate, the person or organization contemplating the expenditure must obtain written authorization from the treasurer of the candidate's principal campaign committee. *Minn. Stat.* 10A.17, subd. 2; see also 9 MCAR §1.0007. This provision is intended to allow the expenditure to be counted against the candidate's expenditure and contribution limits, to insure that the candidate has knowledge of the expenditure and an opportunity to disavow it, and to provide a single, central point to which all contributions, committee expenditures and approved expenditures are reported.

As we interpret chapter 10A, ADA must request written authorization from the appropriate treasurers before spending money to prepare and distribute sample ballots on behalf of candidates who have screened before ADA. If written authorization is granted, then the expenditures are counted toward the expenditure limits and aggregate contribution limits of the candidate. In addition, ADA must must report the expenditures as approved expenditures, and the expenditures are subject to the statutory limit on the amount a person or organization may contribute.

If written authorization is expressly denied, then the expenditure would be treated as an independent expenditure, and reported by the ADA as such, in the absence of evidence that the denial of authorization is not genuine. *Minn. Stat.* 10A.20, subd. 6. In such a case, ADA would be required to include on the face of its sample ballot a conspicuous disclaimer, stating that the ballot was not approved by the candidate, in accordance with *Minn. Stat.* 10A.17, subd. 5 -- a requirement designed to protect the candidate from unauthorized communications and to enable the public to determine which communications have been authorized by a candidate. Bang v. Chase, 442 F. Supp. 758, 769 (1977) aff'd 98 S.Ct. 2840 (1978).

We are sensitive to the danger that a candidate might arrange for an expenditure to be made by supporters, and then execute a sham disavowal of the expenditure, as a means of subverting the contribution and spending limits. If other evidence indicates that an expenditure is in fact authorized or approved by a candidate, we will not hesitate to look past a purported denial of written authorization.

Absent such evidence, however, we believe there are sufficient statutory safeguards that an expenditure for which the candidate's treasurer has denied authorization may be treated as independent. We note that pursuant to *Minn. Stat.* 10A.17, subd. 5, any person who falsely claims that a candidate has not approved an expenditure is guilty of a misdemeanor. In addition, a person or organization making independent expenditures in excess of $100 in one year must file with this Board a sworn statement that the expenditures were not made with the authorization or expressed or implied consent of, or in cooperation or in concert with, or at the request or suggestion of any candidate or agent or principal committee of a candidate. We believe these provisions will help to deter purportedly independent expenditures which are in fact requested by the candidate.

To summarize, then, it is our opinion that where a candidate has appeared for the purpose of being screened for endorsement by ADA and inclusion on its sample ballot, it is incumbent upon ADA to request the authorization of the candidate's treasurer to make expenditures to distribute the sample ballots on the candidate's behalf. If authorization is granted, the expenditure is reported as an approved expenditure, and therefore a contribution. If authorization is denied, the expenditure is reported as an independent expenditure, absent evidence that the denial is a sham.

Issued to:

Approved:

Senator Wayne Olhoft
Room 30
State Capitol
St. Paul, MN 55155

May 30, 1980

RE: Purchase of a Typewriter by a Principal Campaign Committee

ADVISORY OPINION #64

SUMMARY

64. The treasurer of the principal campaign committee shall allocate the total cost of a typewriter as a campaign expenditure in the year first used or consumed, unless the treasurer of the campaign committee can clearly demonstrate the capital expenditure was made in part for a noncampaign purpose.

FACTS

Senator Wayne Olhoft is a state senator from District 29. Your principal campaign committee is considering purchasing a $1,000 typewriter. In this connection you have the following questions:

QUESTIONS

1. If a volunteer committee purchases a $1,000 typewriter during a campaign year, is the entire cost charged against that specific year's spending limits? Would it make a difference if that machine was purchased in a noncampaign year? Is it against the current year's use?

2. If a volunteer committee were to purchase the same typewriter and sell it later in the year, would it be proper to submit only the difference between the purchase and the sale price as the campaign expenditure?

3. Can you identify any exceptions to the answers you provide to the above situations that might apply if the item happened to be a different type of capital expenditure?

OPINION

Minn. Stat. 10A.01, subd. 10, defines campaign expenditure, or expenditure as a purchase, or payment of money or anything of value, or an advance of credit, made or incurred for the purpose of influencing the nomination or election of a candidate. An expenditure is considered to be made in the year in which the goods or services for which it was made are used or consumed. In Advisory Opinion No. 26 A., dated December 4, 1975, the Board established the following policy:

In general:

A. If goods are entirely used or consumed in the year of purchase, and solely in

that year, then the expenditure will be reported only once.

B. If the goods are purchased in a non-election year, but some of the goods are not first used or consumed in that year, then those remaining portions first used or consumed in a subsequent year will be reported as used or consumed in that subsequent year for purposes of expenditure limitations.

C. If the goods are purchased and first used or consumed substantially in an election year, the entire purchase price will generally be counted toward the expenditure limit for that election year.

D. The total purchase price of an item or items is counted towards expenditure limitations only once even if spread over more than one year to reflect use or consumption in more than one year.

E. Finally, items initially reported as used or consumed in one year, but saved or salvaged and used in a subsequent year, are counted towards the expenditure limitation only in the year first used.

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1. In the case of purchase of a typewriter in an election year, the entire cost of the typewriter is reported as an expenditure in that year. The cost of the typewriter is counted completely towards the expenditure limitation only in the year in which it is first used. When the typewriter is reused in a subsequent year, it need not be reported for any purpose.

   If the typewriter were purchased in a non-election year and first used and consumed in that year, it would be chargeable against the non-election year expenditure limit. Since the law requires the purchase of goods and services be charged against the expenditure limit when used and consumed, the use of a depreciation schedule is not necessary. If the typewriter was not used and consumed in a non-election year, it would be reported as a non-campaign disbursement in the non-election year and as a prepaid expenditure counted against spending limits in the election year.

2. When a typewriter is purchased, used and sold in the same year, the treasurer would report the total cost as an expenditure against the campaign expenditure limit. The receipt of money from the sale of the typewriter is not a contribution, but it shall be reported as other income.

3. An exception to the above answers could arise if a treasurer could clearly demonstrate to the Board that a capital expenditure was made in part for a noncampaign purpose (i.e., for a purpose other than influencing the nomination or election of a candidate). In such a case, the treasurer of the principal campaign committee could apportion the cost of the capital expenditure against the applicable expenditure limit. However, in view of the fact that a principal campaign committee is formed primarily to promote the nomination and election of a candidate, it will not lightly be inferred that a committee's capital expenditures are made for noncampaign purposes, in the absence of clear and persuasive evidence that that is the case.

Issued to:

Rep. Gerald Knickerbocker
395 State Office Building
St. Paul, Minnesota 55155

Approved:

July 9, 1980

RE: Ballot Questions

ADVISORY OPINION #65

SUMMARY

65. Contributions and expenditures made to promote or defeat ballot questions are not subject to campaign expenditure or aggregate contribution limits, but are subject to individual contribution limits.

Expenditures by a candidate or by a candidate's principal campaign committee, and "approved expenditures", will not be considered to promote or defeat a ballot question if the communication clearly identifies the candidate; such expenditures will instead be counted toward the candidate's limits. Thus, expenditures for any of the following purposes will count toward the candidate's limits, if the expenditure is made by the candidate or his principal campaign committee: advertisements or sample ballots containing the name or picture of the candidate; a forum or broadcast in which the candidate participates; and newsletters, columns, questionnaires or mass mailings which are either (a) made for purposes other than constituent service purposes, or (b) made more than sixty days after adjournment of the legislature sine die.

Expenditures made by a political committee or political fund other than a principal campaign committee of a candidate to promote or defeat a ballot question or questions may be considered approved expenditures on behalf of a candidate in certain circumstances.

"Independent expenditures" which expressly advocate a position on a clearly identified ballot question will be treated, at least in part, as ballot expenditures, but may also be treated in part as independent expenditures on behalf of a candidate.

FACTS

In its 1980 session the legislature made a number of changes in *Minn. Stat.* Chapter 10A. You have asked the following questions regarding the treatment of contributions and expenditures to promote or defeat a ballot question:

QUESTION

1. Article XVII, Sections 2, 3, 4 and 5 of H.F. 1121 appear to indicate that money or anything of value given or spent for the purpose of promoting or defeating a ballot question are to be considered campaign contributions or expenditures. However, Article XVII, Section 12 of H.F. 1121 indicates that any contribution or expenditure to promote or defeat a ballot question made by a candidate who agrees to limit his contributions and expenditures as a condition for receiving public

financing shall not count towards that candidate's aggregate limits. If such money or other things of value given or spent are considered contributions or expenditures, how can they be exempted from the limits specified in 10A.25, subdivision 2 and 10A.32, subdivision 3, clause (b)?

OPINION

1. *Minn. Stat.* 10A.32, subd. 3(b) provides that the amount of all contributions to a principal campaign committee which are utilized by the committee to pay expenditures or make contributions in support or opposition to a ballot question shall not be subject to campaign expenditure or aggregate contribution limits. Although *Minn. Stat.* 10A.01, subd. 10 defines a campaign expenditure as either for the purpose of influencing the nomination or election of a candidate or supporting or opposing a ballot question, the legislature has exempted those expenditures in support or opposition to a ballot question from the limitations imposed by *Minn. Stat.* 10A.25, subd. 2 and 10A.32, subd. 3(b).

QUESTION

2. If "contributions or expenditures" to promote or defeat a ballot question made by a candidate do not count against that candidate's aggregate contribution and expenditure limits for the purposes of receiving public financing (under 10A.32, subdivision 3), do they count against that candidate's aggregate expenditure limit for the purpose of qualifying for tax credits (under 10A.32, subdivision 3(b))? If not, what happens if a candidate files a public financing agreement and a tax subsidy agreement?

OPINION

2. An expenditure to promote or defeat a ballot question by a candidate is not limited by *Minn. Stat.* 10A.25, subd. 2. That section limits only expenditures on behalf of a candidate for nomination or election to office. For example, *Minn. Stat.* 10A.25, subd. 2 states:

> "10A.25, subd. 2. In a year in which an election is held for an office sought by a candidate, no expenditures shall be made by the principal campaign committee of that candidate, nor any approved expenditures made on behalf of that candidate which expenditures and approved expenditures result in an aggregate amount in excess of the following . . . ." (emphasis added)

An expenditure can be either for influencing the nomination or election of a candidate or for supporting or opposing a ballot question; but when 10A.25, subd. 2 is read in conjunction with *Minn. Stat.* 10A.32, subd. 3(b), it is the Board's opinion that ballot question expenditures do not count against a candidate's spending limitation if the candidate signs either a public financing agreement or a tax credit subsidy agreement.

QUESTION

3. *Minn. Stat.* 10A.32, subdivisions 1 and 2 indicate that a candidate may not receive public funds in an amount greater than the amount of campaign expenditures that that candidate made during his campaign. Do "expenditures" to promote or defeat a ballot question made by a candidate apply in making this determination? Can

public funds be used by a candidate to promote or defeat a ballot question?

OPINION

3. No. Expenditures to promote or defeat a ballot question are not expenditures to influence the nomination or election of a candidate, therefore public funds cannot be used to promote or defeat a ballot question.

QUESTION

4. Can a candidate, who agrees to limit his contributions and expenditures as a condition for receiving public financing, raise money in excess of the aggregate contribution limit and then transfer it out to another committee as a ballot question "contribution" and not have that transfer count against his or her limits?

OPINION

4. A candidate can contribute any amount of money to support or oppose a ballot question. As provided in *Minn. Stat.* 10A.32, subd. 3(b), such contributions are not subject to limitation.

QUESTION

5. What constitutes "promoting or defeating a ballot question" within the meaning of Article XVII, Section 8? What if the "expenditure or contribution" does not expressly advocate the promotion or defeat of a particular ballot question, but deals with several ballot questions generally? What if it is merely informative in nature? Do groups or individuals who merely provide informative material have to register with the Board and file disclosure reports?

OPINION

5. The determination whether an expenditure is made "to promote or defeat a ballot question" will depend in part on the identity of the person or organization making the expenditure. If the expenditure is made by a candidate, or by a candidate's principal campaign committee, then the expenditure will be considered as an expenditure to promote or defeat a ballot question if it is made for a communication which (1) does not identify the candidate, (2) expressly advocates a position with regard to a ballot question, and (3) clearly identifies the ballot question or questions on which a position is advocated. (See Answer to Question 13).

These three criteria will similarly govern the classification of expenditures which are not made directly by a candidate or the candidate's principal campaign committee, but which are nevertheless "approved" by the candidate or committee, within the meaning of *Minn. Stat.* 10A.01, subd. 10a (1978). Such "approved expenditures" are those in which there is sufficient interaction, coordination, or linkage between the person making the expenditure and the candidate's campaign that the expenses may properly be imputed to the candidate. "Approved expenditures" include expenditures made with the express or implied consent, authorization, cooperation, request or suggestion of the candidate, his principal campaign committee or agents; such expenditures will not be considered "to promote or defeat a ballot question" unless they meet the three criteria set out above.

In contrast, an expenditure which is not an approved expenditure, but rather

an independent expenditure by a person or organization other than the candidate or the candidate's principal campaign committee, will be considered as promoting or defeating a ballot question if the expenditure involves a communication which (1) expressly advocates a position with regard to (2) a clearly identified ballot question or questions. Independent expenditures which meet these two criteria may at the same time promote the candidacy of a particular candidate, and may therefore have to be allocated, with part of the cost treated as an expenditure to promote or defeat a ballot question, and part of the cost treated as an independent expenditure on behalf of the candidate.

To "expressly advocate a position" on a ballot question, a communication must contain express words of advocacy of support for, or opposition to, the ballot question, such as "vote for," "support," "cast your ballot for," "'yes' on proposition X," "defeat," or other language clearly urging a particular position. To "clearly identify" a ballot question, a communication must include an explicit reference to the particular question or questions--for example, by the proposition's formal or popular title; by number, if it is numbered on the ballot; or by any other unambiguous reference. Thus, expenditures for communications which are purely "informative," or which discuss a question or questions "generally," will not come within the registration and reporting requirements if they do not expressly advocate a position on particular questions, and if they are not otherwise subject to registration and reporting as expenditures to influence the election or defeat of a candidate.

QUESTION

6. In Article XVII, Section 8, do "activities related to qualifying the question for placement on the ballot" include any expenses incurred by a legislator or lobbyist while the proposal was working its way through the legislative process?

OPINION

6. The reporting and disclosure issues raised by this question are complex and potentially may involve both lobbyist reporting and campaign finance ballot disclosure. Since the constitutional amendment has not at this time been approved by the voters, it is the Board's intention to carefully review the law either to promulgate rules or to ask the legislature to clarify the reporting requirements when petitions are presented to the legislature for action.

QUESTION

7. What criteria does the candidate use in determining whether a given "contribution or expenditure" is made or given to promote or defeat a ballot question? For example, does the contributor have to clearly state on his contribution that it is made to promote or defeat a ballot question?

OPINION

7. *Minn. Stat.* 10A.19, subd. 1, requires an individual who seeks nomination or election to office to form a single principal campaign committee to report all contributions and expenditures. Since the primary purpose of a principal campaign committee is to support the nomination or election of a candidate, all contributions received by the committee shall be considered money or anything of value to influence a candidate's nomination or election, even though the candidate chooses to

spend money to support or oppose a ballot question. All contributions and loans received are therefore subject to applicable limits imposed by *Minn. Stat.* 10A.27, subds. 1, 2 and 8.

QUESTION

8. How do the contribution limits in *Minn. Stat.* 10A.27 apply to "contributions" to promote or defeat a ballot question which are given to a candidate? For example, can an individual, political committee or political fund contribute up to $750 to a House candidate for the purpose of promoting or defeating each ballot question? Or does the $750 limit apply in aggregate to all contributions made to a candidate from that individual, political committee or political fund, regardless whether it was made to promote or defeat a ballot question? What is a candidate receives contributions from the same organization, but that organization has established two separate committees: one for supporting candidates and one for supporting or opposing ballot questions?

OPINION

8. *Minn. Stat.* 10A.27, limits all contributions to a candidate's principal campaign committee. Since the Board considers all funds received by a principal campaign committee to be for the primary purpose of influencing a candidate's nomination or election, all contributions to the committee are subject to the contribution limits. An individual or organization cannot give money to a candidate exclusively for ballot question support without being subject to contribution limitations. If an organization establishes one political committee or political fund to support candidates and another to support or oppose a ballot question and both political committees or political funds give a contribution to a principal campaign committee, the contribution will be considered a contribution from the same association and therefore in aggregate subject to the applicable contribution limit. It should be noted that a political fund or a political committee which accepts corporate contributions for supporting or opposing a ballot question cannot give, directly or indirectly, money, free services or property or anything else of value to influence the election of candidates. (See *Minn. Stat.* 210A.34, as amended by Minn. L. 1980, c 607, art. 17 §§ 13, 14).

QUESTION

9. Must a candidate establish a separate political committee or fund, aside from his principal campaign committee, if he wishes to receive "contributions" or make "Expenditures" to promote or defeat a ballot question?

OPINION

9. No. A candidate is not required to establish a separate political committee to support or oppose a ballot question. *Minn. Stat.* 10A.19, subd. 4 states:

> "No candidate shall accept contributions from any source, other than himself, in aggregate in excess of $100 or any money from the state elections campaign fund unless he designates and causes to be formed a single principal campaign committee." (emphasis added.)

The law allows a candidate to spend money on behalf of a ballot question from principal campaign committee funds.

QUESTION

10. Must an individual, political committee or political fund establish a separate committee or fund for each ballot question which they intend to promote or defeat?

OPINION

10. No. An individual political committee or political fund is not required to establish a separate political committee or political fund for each ballot question which the political committee or political fund intends to promote or defeat. *Minn. Stat.* 10A.20, subd. 3(g) requires the disclosure of expenditures for ballot questions when they are in aggregate in excess of $100. In the cases where corporate contributions are given to a political committee or political fund, such political committees or political funds cannot contribute, directly or indirectly, money or anything of value to a principal campaign committee, political committee or political fund which supports a candidate.

QUESTION

11. If an individual or group of two or more persons makes a "contribution" to a political committee or fund organized to promote or defeat a ballot question, must that individual or group register with the Board and file disclosure reports? What if that individual or group is not located in Minnesota?

OPINION

11. An individual is not required to register or report to the Board a contribution to a political committee or political fund organized to promote or defeat a ballot question. A group of two or more persons located within Minnesota which makes a contribution to a political committee or political fund organized to promote or defeat a ballot question would be required to register and report the sources of their contributions if the association gave in excess of $100, in the aggregate, during a calendar year. A group outside the state must either register and report to the Board or provide the recipient state registered committee with disclosure documents as set forth in *Minn. Stat.* 10A.22, subd. 7. In addition, any individual who makes expenditures expressly advocating the approval or defeat of a ballot question in aggregate in excess of $100 is required to report on the filing dates set by *Minn. Stat.* 10A.20, subd. 2.

QUESTION

12. If a group wishes to make "contributions and expenditures" to promote or defeat a ballot question, does it register as a political committee or political fund?

OPINION

12. A group formed exclusively to promote or defeat a ballot question would register as a political committee. An association whose primary purpose is other than promoting or defeating a ballot question and which uses any accumulation of dues or voluntary contributions would register as a political fund. *Minn. Stat.* 10A.01, subd. 15 and subd. 16 provide the statutory distinction between the two types of registration.

QUESTION

13. Are the following considered campaign expenditures (and therefore counted against a candidate's limits) or "expenditures" to promote or defeat a ballot question (and therefore not subject to any limits):

a. media advertisements for a ballot question which contain pictures of or incidental references to a candidate, but do not mention his or her candidacy?

b. newsletters, newspaper columns, questionnaires, circulars or other literature on a ballot question which contain pictures of or incidental references to a candidate but do not mention his or her candidacy?

c. a public forum, radio or television show regarding a ballot question in which a candidate participates but does not mention his or her candidacy?

d. a sample ballot indicating what candidates support or oppose a ballot question?

e. letters or other information regarding a ballot question sent out by an officeholder or constituents (60 days) after adjournment sine die of the legislature in the year in which that officeholder is up for election?

Does it make any difference in (a) to (e) above if the candidate's candicacy is mentioned or if the item(s) is paid for from his personal funds?

OPINION

13. The Board assumes that each of these questions concerns hypothetical expenditures by candidates and their principal campaign committees. The Board believes that such expenditures may generally be assumed to be made in furtherance of the candidate's campaign, and the United States Supreme Court has indicated that this assumption is constitutionally permissible. Buckley v. Valeo, 424 U.S. 1, 79 (1976). Accordingly, any expenditure made by a candidate or a candidate's principal campaign committee will be considered to be made for the purpose of influencing the candidate's nomination or election, if the expenditure involves a communication in which the candidate is clearly identified. Expenditures which are "approved" by the candidate or the candidate's principal campaign committee, within the meaning of *Minn. Stat.* 10A.01, subd. 10a, will be treated in the same manner.

A communication will be considered to clearly identify a candidate if it includes the candidate's name, picture, initials (e.g., "F.D.R."), nickname (e.g., "Ike"), or another equally unambiguous reference to the candidate. (The mere incidental inclusion of the candidate's name in a statutorily-required disclaimer provision will not be treated as such an identification, however.)

Therefore, the expenditures described in question 13(a), for advertisements which contain pictures of, or references to, the candidate, will be considered expenditures to promote his or her election. Similarly, the expenditures described in question 13(d), for a "sample ballot" containing the candidate's name or

picture, will be considered expenditures for the purpose of influencing the candidate's election, assuming the expenditures are made by the candidate or with the approval of the candidate.

The expenditures described in question 13(c), for a forum or broadcast in which the candidate participates, will also be considered expenditures to influence the candidate's election. (Again, we assume the expenditures are made by the candidate or the candidate's principal campaign committee. Independent expenditures for such a forum, made by a group unconnected to the candidate's campaign, would not count toward the candidate's limits.)

The expenditures described in questions 13(b) and 13(e) may be discussed together. If an expenditure is for constituent services, whether in the form of newsletters, public opinion questionnaires, newspaper columns, circulars or mass-produced letters, then it will be treated as a constituent service non-campaign disbursement if made prior to the sixtieth day after adjournment sine die of the legislature in an election year, but the expenditure will be considered an effort by the officeholder to influence his or her nomination or election if made after that date. If expenditures of the type described in question 13(b) and 13(e) are not for constituent service purposes (for example, if they are made by a non-incumbent candidate, or in areas outside an incumbent's district), then the communication will be considered to be made to influence the candidate's election if it clearly identifies the candidate.

Mention of the candidate's candidacy in any of the foregoing communications would not alter the result, but would tend to reinforce the conclusion that the expenditure is made on the candidate's behalf. If an item is paid for from the candidate's personal funds, it will be exempt from the contribution limits, as is true of any expenditure from a candidate's personal funds to promote his or her candidacy, but its treatment will be otherwise unaffected. If expenditures of any of the types described in questions 13(a)-13(e) are made as independent expenditures by persons outside the candidate's principal campaign committee, they will be considered independent expenditures on behalf of the candidate if the candidate is clearly identified and if the communication expressly advocates the candidate's election or defeat. Where these criteria are met, it may be necessary to allocate the expenditure, with part treated as an expenditure to promote or defeat a ballot question, and part treated as an independent expenditure to influence the candidate's election.

QUESTION

14. If two or more candidates participate in an advertisement, fundraiser, etc., to promote or defeat a ballot question, are the "contributions or expenditures" apportioned in the same manner as any other campaign contribution or expenditure?

OPINION

14. The Board considers that any money raised by a candidate and his principal campaign committee is for the purpose of influencing his nomination or election. Even though campaign money can be used for promoting or defeating a ballot question, two or more candidates who participate in advertisements, fundraisers, etc., must apportion those expenses on a reasonable proportional basis as provided in *Minn. Stat*, 10A.02, Subd. 5.

QUESTION

15. Are expenses incurred by a candidate for food and beverage consumed at a fundraising event held to raise money to promote or defeat a ballot question considered non-campaign disbursements? Or are all the expenses considered non-campaign disbursements?

OPINION

15. Since the Board considers all money raised by a principal campaign committee to be for the purpose of influencing the nomination or election of a candidate, any payments for fundraising events will be considered payments for raising money to influence a candidate's election. *Minn. Stat.* 10A.01, subd. 10c exempts certain types of disbursements from being charged against an expenditure limit; therefore, food and beverage served at a fundraising event are not chargeable against a spending limit whether or not the event was held primarily to raise money for influencing a vote on a ballot question.

QUESTION

16. Can "expenditures" to promote or defeat a ballot question be considered multi-candidate political party expenditures, if they meet the criteria established in 10A.275?

OPINION

16. No. *Minn. Stat.* 10A.25 provides certain exceptions for political party expenditures on behalf of candidates. Since expenditures to promote or defeat ballot questions are not considered efforts to influence the nomination or election of a candidate, this section would not allow a political party committee to publish, post or broadcast materials advocating support or opposition to candidates who promote or defeat a ballot question. Such expenditures, if undertaken, would be allocable to candidates as contributions in kind and expenditures subject to all contribution and expenditure limitations. Political party organizations may spend money to support or oppose a ballot question without allocations to candidates if no clearly identified candidate's name is mentioned and no appeal, direct or indirect, is made.

QUESTION

17. Do the tax credit provisions of 10A.32, subdivision 3b apply to "contributions" given to a candidate to promote or defeat a ballot question? Can a contributor claim a tax credit for such a "contribution"? Does it matter if the candidate signed a tax credit subsidy agreement?

OPINION

17. Since all contributions given to a principal campaign committee are considered to be for the purpose of influencing the nomination or election of a candidate, tax credits for contributors would be permissible if the candidate signs a tax credit agreement and the contribution is made to a principal campaign committee.

QUESTION

18. Must anonymous contributions in excess of $20 made to promote or defeat a

ballot question be forwarded to the Board for deposit in the state elections campaign fund?

OPINION

18. Yes. A "transfer of funds" is defined by *Minn. Stat.* 10A.01, Subd. 7a to include money or negotiable instruments given to promote or defeat a ballot question, therefore the provisions of *Minn. Stat.* 10A.15, Subd. 1 would be applicable to anonymous contributions in excess of $20 given to a political committee or political fund formed to promote or defeat ballot questions.

QUESTION

19. If an officeholder is not running for reelection or is not up for election in the year during which he or she makes "contributions or expenditures" to promote or defeat a ballot question, when and how does that officeholder report such "contributions or expenditures"?

OPINION

19. An existing officeholder campaign committee whose name is not on the ballot reports only on January 31st of each non-election year, even if contributions or expenditures are made to a candidate, political committee or political fund, or on behalf of ballot questions.

QUESTION

20. Of what force and effect is this advisory opinion? Can an individual file a complaint with the Board based on a candidate's violation of any part of this opinion?

OPINION

20. An advisory opinion represents the Board's interpretation of the law with regard to particular factual situations. The force of such an opinion arises from the authority conferred upon the Board by *Minn. Stat.* 10A.02, Subd. 12, which indicates that the opinions are issued to guide the conduct of the persons requesting them, and lapse the day after adjournment of the regular legislature session in the second year following promulgation. Individuals can expect that, in equivalent factual settings, the Board will measure any allegations of statutory violations by the standards and criteria embodied in its current opinions. Moreover, a court may take judicial notice of the Board's opinions, and the Board's opinions have been recognized as authoritative for the purpose of interpreting arguably vague or overbroad statutory language. See Bang vs. Chase, 442 F.Supp. 758, 769, 770 (D.C. Minn. 1976), aff'd 98 S.Ct. 2840 (1978).

Issued to:

Approved:

Representative Glen Sherwood
Star Route 60
Pine River, MN 56474

June 6, 1980

RE: Candidate Participation - Radio Program

ADVISORY OPINION #66

SUMMARY

66. A candidate who merely appears on a radio program is not influencing his nomination or election if no mention of his candidacy is made, or there is no appeal for support, direct or indirect, for his candidacy.

FACTS

Representative Glen Sherwood is a member of the Minnesota House of Representatives from District 4B. You are also a member of the Board, Minnesota Christian Radio, Inc. You have been asked to make some religious commentary, provide some religious encouragement and read devotional material for the listening audience during a three day radio Sharathon. During the program you will not be making political comments or mention your candidacy.

QUESTION

Will my participation in this Sharathon be considered as a campaign expenditure?

OPINION

No. It is the opinion of the Board that mere participation of a candidate on a radio program does not constitute an effort on his part to influence his nomination or election. *Minn. Stat.* 10A.01, subd. 10 defines expenditure as "a purchase, payment of money or anything of value, or an advance of credit made or incurred for the purpose of influencing the nomination or election of a candidate." A determination must be made whether such an appearance is "on behalf of" a candidate. If there is no mention of your candidacy and no appeal for support, direct or indirect, the Board concludes the mere presence on a radio program does not constitute an effort to influence your nomination or election.

Issued to:

Pamela Berkwitz, President
Joyce Lake, Action Chair
League of Women Voters of Minnesota
555 Wabasha Street
St. Paul, MN 55102

Approved:

June 6, 1980

RE: Ballot Question Support

ADVISORY OPINION #67

SUMMARY

67. The Minnesota League of Women Voters and its state affiliates must register separate political funds to support or oppose a ballot question if, independently, each element of the Minnesota League of Women Voters raises or spends money in excess of $100 to influence a vote on a ballot question; however, the Minnesota League of Women Voters can establish a single political fund to receive contributions and make expenditures on behalf of all League of Women Voter elements in support or opposition to a statewide ballot question.

FACTS

The Minnesota League of Women Voters is a membership organization with some 68 local affiliate elements. The League of Women Voters will be supporting at least two of the constitutional amendment questions on the November statewide ballot.

QUESTIONS

1. Can the League of Women Voters of Minnesota register a single political fund and report for the entire organization?

2. Does each of the 68 local Leagues, if raising and spending money independently on behalf of a ballot question, have to register and report to the Board?

OPINION

1. In response to question 1, the League of Women Voters of Minnesota may establish a single political fund to receive contributions and make expenditures in support or opposition to a ballot question.

Minn. Stat. 10A.01, subd. 16 defines political fund:

> *Subd. 16. "Political fund" means any accumulation of dues or voluntary contributions by an association other than a political committee, which accumulation is collected or expended for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or defeating a ballot question.*

Under *Minn. Stat.* 10A.12, subd. 1:

10A.12 POLITICAL FUNDS. Subdivision 1. No association other than a political committee shall transfer more than $100 in aggregate in any one year to candidates or political committees or make any approved or independent expenditures or expenditure to promote or defeat a ballot question unless the transfer or expenditure is made from a political fund.

Under *Minn. Stat.* 10A.12, subd. 5:

Subd. 5. Notwithstanding subdivision 1, any association may, if not prohibited by other law, deposit in its political fund money derived from dues or membership fees. Pursuant to section 10A.20, the treasurer of the fund shall disclose the name of any member whose dues, membership fees and contributions deposited in the political fund together exceed $50 in any one year.

Any association may transfer money from its treasury to its political fund. The association has then satisfied the requirement of the statute. The treasurer of the state political fund would be required to register a political fund when in excess of $100 is raised or spent to support or oppose a ballot question.

The treasurer of the state political fund shall disclose all contributions received from individuals or local League of Women Voters in excess of $100. As set forth in *Minn. Stat.* 10A.12, subd. 5, the treasurer of the political fund shall disclose the name of any member whose dues, membership fees, and contributions deposited in the political fund together exceed $50 in any one year. Each local League element may designate the state League of Women Voters of Minnesota Political Fund and transfer dues, contributions or membership fees to the political fund. The local affiliate would not be required to register and report to the Board, provided it did not make contributions and expenditures directly in its own name in support or opposition to a ballot question.

2. Yes, a local League of Women Voters element would be required to register and report contributions and expenditures to promote or defeat a ballot question when the local League spent directly in excess of $100 if such activity was not in the name of and not under the direct control of the State League of Women Voters Political Fund.

Issued to:

Approved:

Representative Al Wieser, Jr.
332 State Office Building
St. Paul, Minnesota 55155

July 9, 1980

RE: Radio Spots

ADVISORY OPINION #68

SUMMARY

68. Free air time given to, and controlled by, a candidate, between 60 days after adjournment sine die of the legislature and such time as when the broadcasting station implements its equal time policy in accordance with FCC regulations, must be reported as in-kind contributions and campaign expenditures.

TEXT

You have requested an advisory opinion from the Ethical Practices Board based on the following:

FACTS

You are a candidate for the State House of Representatives in the 1980 election and a member of the Minnesota House. Two radio stations, both located in LaCrosse, Wisconsin, have each made 90 seconds of radio time available to you every weekend which you use to report and comment on Minnesota legislation and local, state, and national issues.

QUESTION

Are these practices "contributions" under *Minn. Stat.*10A.01, subd. 7, which must be reported on your campaign disclosure forms?

OPINION

Based on *Minn. Stat.* 10A.01, subds. 7, 7a, and 7b, the fundamental criterion for determining whether free air time given to, and controlled by, a candidate shall be considered a campaign contribution is whether or not the air time was given "for the purpose of influencing the nomination or election of a candidate."

In the opinion of the Board:

1. In a non-election year and prior to 60 days after adjournment sine die of the legislature in an election year, free air time given to, and controlled by, an officeholder for reports to constituents on current legislation, issues, and events, are constituent services[1]/ and are not done "for the purpose of influencing the nomination or election of a candidate"; therefore the air time is not reportable as a contribution.

2. Once a broadcasting station implements its equal time policy, in

accordance with FCC regulations,[2] and provides equal, free time to all candidates, the provision of air time can no longer be considered to further the candidacy of any particular candidate, or to favor any one candidate over another; therefore, the value of the air time is not reportable as a contribution.

3. However, during any period more than 60 days after adjournment sine die of the legislature, but before the broadcasting station implements its equal time policy, free air time given to, and controlled by, a candidate will be considered to be made "for the purpose of influencing the nomination or election of a candidate"; therefore the air time's market value, if worth in excess of $20, must be reported as a donation in kind and in-kind campaign expenditure.[3]

PERTINENT STATUTORY AUTHORITY

Minn. Stat. 10A.09, subd. 7, 9 MCAR § 1.0029A; 9 MCAR § 1.0029F; CFR 73.1940.

.....

FOOTNOTES

[1] Legislative reports to constituents, including newsletters and public opinion questionnaires, (but excluding official press releases and letters to the editor) which are authored and controlled by an officeholder and published or broadcast more than 60 days after adjournment sine die of the legislature, are not "news items or editorial comments" specifically exempt from *Minn. Stat.* 10A.01, subd. 7's definition of "contribution." See 9 MCAR § 1.0029A, 9 MCAR § 1.0029F.

[2] 47 CFR 73.1940 provides that a broadcast licensee which permits any "Legally Qualified Candidate" to use its facilities (other than in bona fide newscasts, interviews, documentaries, or on the spot news event coverage), must afford equal opportunities to all other legally qualified candidates for the same office.

A legally qualified candidate is anyone who is qualified to hold office and has publicly announced his intention to run. In addition, the individual must have qualified for a place on the primary or election ballot or, if seeking nomination by means of convention or caucus, must make a substantial showing (engaged to a substantial degree in activities commonly associated with campaigning) that he or she is a bona fide candidate.

[3] We call attention to *Minn. Stat.* 210A.34, which prohibits corporate contributions.

Issued to:

Approved:

Commissioner Richard E. Kremer
Board of Hennepin County Commissioners
2400 Government Center
Minneapolis, MN 55487

August 15, 1980

RE: Economic Interest Disclosure - Hennepin County Public Official

ADVISORY OPINION #69

SUMMARY

69. An individual who holds a lease, as a security interest with a value in excess of $2,500 must disclose the interest on a statement of economic interest. The lessor is not disclosable. For purposes of Laws 1980, Chapter 362, section 13, subd. 2(b), a holder of securities is any individual having an ownership interest in any security or who is the trustee or beneficiary of a trust. A trustee of an association organized exclusively for social, religious, educational, medical, benevolent, fraternal, charitable, reformatory, athletic, chamber of commerce, industrial development, trade or professional association purposes and not for pecuniary gain, no part of the net earnings of which inures to the benefit of any private stockholder or individual, does not have to report his trusteeship unless he receives compensation as a director, officer, member or employee in excess of $50 in any month. This opinion applies only to chapter 362, the Hennepin County Disclosure law.

FACTS

As a member of the Board of Hennepin County Commissioners you must register a Statement of Economic Interest with the County Auditor of Hennepin County.

QUESTIONS

1. Does the green sheet titled Statement of Economic Interest (ET-00015-01) Instructions for Completion have the force of law?

2. Under the definition of "Securities" given in 9 MCAR § 1.0109A, reference is made to any "lease". If leases are to be considered securities for economic interest disclosure purposes, does the term apply to both the lessor's and the lessee's interests? For example, would an apartment owner list each of his tenants?

3. Where the registrant is a trustee, but not the beneficiary of a trust, must the trust's securities be reported? For example, trustees of a church or trustees of aging parents?

OPINION

1. Inasmuch as the Statement of Economic Interest - Instructions for Completion are drawn from *Minn. Stats.* 10A.01 through 10A.10, and Rules 9 MCAR § 1.0100 through § 1.0111, they have the force of law for public officials and candidates for elective public offices enumerated in *Minn. Stat.* 10A.01, subd. 18(a)-(o).

Chapter 362 of the Hennepin County Disclosure Law gives the Board the power to issue advisory opinions in interpretation of the law. In the absence of written requests for advisory opinions, the Board has provided Hennepin County with the same instructions for their economic interest disclosure program as are used in the Board's program. The instructions do not have the force of law for office-holders or candidates for offices not listed under *Minn. Stat.* 10A.01, subd. 18; including, Hennepin County Commissioner, Hennepin County Attorney, Hennepin County Sheriff, Aldermen in Minneapolis, Councilmen in Bloomington, and Mayor in Minneapolis and Bloomington. This opinion applies only to Chapter 362, the Hennepin County Disclosure Law.

2. Rule 9 MCAR § 1.0109A includes in the definition of "Securities", "any ... lease ... in any corporation, partnership, trust, or other association." Since only a lessee can hold a lease in an association, it follows that by definition only he, and not the lessor, need disclose the lease interest.

3. A "Holder of Securities" is any individual having an ownership interest in any security or who is the trustee or beneficiary of a trust. Non-beneficiary trustees, as well as the trust beneficiaries, must disclose the name and address of, and type of security held in, any corporation, cooperative, partnership, or other association in which the trust he administers holds securities worth $2500 or more.

The Board has determined, however, that an exception will be made for trustees of associations organized exclusively for social, religious, educational, medical, benevolent, fraternal, charitable, reformatory, athletic, chamber of commerce, industrial development, trade, or professional association purposes and not for pecuniary gain, no part of the net earnings of which inures to the benefit of any private stockholder or individual. As such, church trustees would not have to disclose the nature of the securities they hold in trust; however trustees of aging parents would have to disclose the name and address of, and type of security held in, any association in which the private trust holds securities worth $2500 or more.

Nevertheless, in the opinion of the Board a trustee of a nonprofit organization is a "director, officer, member, or employee" of an association and as such must disclose the name of the organization and the nature of his association if compensated in excess of $50 except for actual and reasonable expenses in any month, in accordance with Laws 1980, Ch. 362 § 13, subd. 1(b) and § 2, subd. 4, dealing with the reporting and definition of "Businesses with which he is associated" by Hennepin County officials.

PERTINENT STATUTORY AUTHORITY

Laws 1980, Ch. 362 § 13, subd. 1(b), § 2, subd. 4; *Minn. Stats.* 10A.01, subd. 4, 10A.01, subd. 18, 10A.09; Rule 9 MCAR § 1.0109 A and B.

Issued to:

Approved:

Richard A. Hodges, President
Joyce W. Lake, Executive Director
Common Cause/Minnesota
Room 307
555 Wabasha Street
St. Paul, MN 55102

August 1, 1980

RE: Ballot Question Expenditures

ADVISORY OPINION #70

SUMMARY

70. The costs for newspaper "endorsement" advertisements and for public forums incurred by a political committee or fund organized solely to promote or defeat a ballot question are reported as ballot question expenditures, not as expenditures on behalf of candidates who permit their names to be used in advertisements, who attend forums, or who make a contribution (transfer) to a political committee or fund organized solely to promote or defeat a ballot question. If, however, the nomination or election of a candidate is expressly advocated in an advertisement or during a forum, costs may, at least in part, have to be allocated back to the candidate as campaign expenditures.

FACTS

Common Cause/Minnesota will be registering a political fund for the sole purpose of promoting a ballot question. In an effort to promote the ballot question, the fund will be taking newspaper advertisements and sponsoring forums.

QUESTIONS ON NEWSPAPER ADVERTISEMENTS

You ask the following questions about newspaper "endorsement" ads in which supporters' names will be listed in similar type size:

1. If an elected official, not up for reelection in 1980 allows his/her name to be used in a paid advertisement with many other names, is that an approved campaign expenditure or a ballot expenditure?

2. If a candidate for office in 1980 allows his/her name to be used in a paid advertisement with many other names, is that an approved campaign expenditure or a ballot expenditure?

3. Is either a candidate or an elected official not running for office, implying approval of an expenditure if he/she transfers funds from his/her principal campaign committee to a committee or fund formed to promote or defeat a ballot question, if the committee or fund uses his/her name in a paid advertisement along with many other names?

4. If a political fund or committee formed to promote or defeat a ballot question asks for contributions from individuals or political committees or funds, to pay for an advertisement which will use their names, is the donor giving consent for an approved campaign expenditure?

OPINION

In its response to Representative Knickerbocker's advisory opinion request, the Board stated that "expenditures made by a political committee or a political fund, other than a principal campaign committee of a candidate, to promote or defeat a ballot question or questions may be considered approved expenditures on behalf of a candidate in certain circumstances." The questions you raise relate to the circumstances under which an expenditure to promote or defeat a ballot question may or may not also be an approved expenditure on behalf of a candidate.

The Board assumes that the political fund set up by Common Cause to support proposition 1 is operating independently of any candidate and that any expenditures made by the fund are made independently of any candidate or his committee or agent. The Board also assumes that the fund to promote the ballot question will not advocate the election or defeat of any candidate.

The fact that an officeholder or a candidate permits a committee or fund organized solely to promote or defeat a ballot question to use his name in the same way as any other supporter of the proposition permits his name to be used does not imply that the officeholder or candidate is permitting an approved expenditure on his behalf. The transfer of money, in the form of either a general contribution to the fund or a specific contribution to help pay for an advertisement, from a candidate or his committee to a political committee or fund organized solely to promote or defeat a ballot question or questions is to be considered a ballot question expenditure by the candidate or committee and is to be reported as such. The making of a contribution is not sufficient to imply authorization of an expenditure on behalf of a candidate by the committee or fund organized to promote or defeat a ballot question.

The Board is guided in its opinion by the Supreme Court decision in Buckley v. Valeo. In that decision, the Court held that in cases where expenditure limits are to be applied, expenditures made on behalf of candidates by independent groups must not only clearly identify the candidate but must also expressly advocate the election or defeat of a candidate by using such phrases as "vote for," "elect," or "defeat." The newspaper "endorsement" advertisements you describe will clearly identify some officeholders and candidates but they will not advocate the election or defeat of any candidate.

In all four of the situations you describe in relation to newspaper "endorsement" advertisements, the costs involved are to be reported as ballot question expenditures. With respect to questions one and two, all expenditures involved in running the advertisement are to be reported as ballot question expenditures by your political fund. With respect to questions three and four, money transferred to your fund by candidates or their committees is to be reported by your fund as contributions received and by the candidate or committee as cash contributed (transferred) to other committees and funds to promote or defeat a ballot question.

QUESTIONS ON FORUMS

You asked the following questions about public forums sponsored and paid for entirely by a political committee or fund formed exclusively to promote or defeat a ballot question.

1. If a clearly identified candidate is invited to participate in such a forum, does his/her appearance constitute approval of expenditures made by the sponsoring committee or fund?

2. Would any part of such an appearance have to be counted as an approved campaign expenditure?

OPINION

Following the reasoning outlined above, the Board feels that as long as the forum is restricted to a discussion of a ballot question or questions and is in no way designed to support the election or defeat of a candidate, a candidate's appearance at a forum does not imply that he/she is consenting to an approved expenditure on his/her behalf. For example, a candidate may be introduced as Senator Jones or Representative Smith; but the introductory speech should not contain a pitch for the reelection of Senator Jones or Representative Smith. The advisory opinion given to Representative Knickerbocker stated that independent expenditures for a forum made by a group unconnected to the candidate's campaign would not count toward the candidate's limits. The Board may find, however, that it would be very difficult to conclude that expenditures for a forum at which a candidate consents to appear and at which his nomination or election is expressly advocated are independent expenditures. The sponsors of the forum should make it clear to all participants that the difference between clearly identifying a candidate and expressly advocating his nomination or election is crucial. If election is expressly advocated, part of the expenditures for the forum may be considered to be approved expenditures on behalf of the candidate.

As long as there is no express advocacy and the political fund operates independently of a candidate or candidates, the costs of the forum are to be reported as ballot question expenditures by the committee or fund sponsoring it and need not be allocated to any candidate.

Issued to:

Representative Willis R. Eken
Twin Valley, Minnesota 56584

Approved:

September 19, 1980

RE: Campaign Literature, Independent Group

ADVISORY OPINION #71

SUMMARY

71. Literature distributed by a candidate's committee is presumed to be for the purpose of influencing the nomination or election of the candidate. The literature should be reported as a campaign expenditure by the candidate's committee whether or not it is also an in-kind donation from the group that prepared it.

FACTS

You are a candidate for the Minnesota House of Representatives. Your opponent has distributed literature, published by the Legislative Evaluation Assembly of Minnesota, stating the publishing entity's views on various pieces of legislation, along with your voting record (and the records of two other legislators) on each piece of legislation. The votes are defined as being either "for Lower Taxes and Less Government" or "for Higher Taxes and Big Government." The literature neither contains a disclaimer, mentions your opponent by name, nor expressly advocates any candidate's election or defeat.

QUESTIONS

1. If a candidate distributes the attached literature, produced by a nonprofit corporation, with his personal campaign literature, does this additional piece also constitute campaign literature and therefore, should it have a disclaimer printed on it?

1. The Ethical Practices Board has generally concluded that any material distributed by a candidate's committee is for the purpose of influencing the nomination or election of the candidate and is therefore a campaign expenditure. In Advisory Opinion #65 issued to Representative Gerald Knickerbocker, the Board said that material distributed by a candidate which supports or opposes a ballot question is to be considered a campaign expenditure if it mentions the candidate's name.

In the question raised here, the literature does not mention the candidate by name but rather the candidate's opponent. According to *Minn. Stat.* 10A.01, subd. 10:

> *An expenditure made for the purpose of defeating a candidate is considered made for the purpose of influencing the nomination or election of that candidate or any opponent of that candidate.*

The Board finds, therefore, that expenses incurred by a candidate's campaign committee to distribute literature which mentions the candidate's opponent by name will be treated as a campaign expenditure by the candidate's committee.

You then ask whether the literature should bear a disclaimer. The principal statutory requirement for disclaimers on campaign literature appears in *Minn. Stat.* 210A.03 (1978). Because that statute is not within the scope of the Board's jurisdiction, we express no opinion on its application to the sitaution you describe. The sole disclaimer provision administered by the Board is that of *Minn. Stat.* 10A.17, subd. 4 (1978), which requires a publishing entity making "independent expenditures" on behalf of a candidate to publicly disclose that the candidate has not approved the expenditures, nor is he responsible for them. This provision has no application to the distribution of literature by the candidate's own campaign committee.

2. Does the attached literature encourage a person to support, oppose or influence a particular candidate?

2. Whether the attached literature is viewed as a campaign expenditure depends on the situation surrounding its use.

If the literature is prepared and distributed independently of the candidate, and is not an "approved expenditure" within the meaning of *Minn. Stat.* 10A.01, subd. 10a (1978), then the organization preparing the literature is not required either to report its expenditures as "independent expenditures," pursuant to *Minn. Stat.* 10A.01, subd. 10b, and 10A.20, subd. 6 (1978), or to use an independent expenditure disclaimer, pursuant to *Minn. Stat.* 10A.17, subd. 4 (1978), because the literature does not expressly advocate the election or defeat of any candidate, and thus is not within the definition of an independent expenditure. *Minn. Stat.* 10A.01, subd. 10b (1978).

Where, however, the literature is used or distributed by the candidate, the expense is to be reported as a campaign expenditure by the candidate. Material distributed by a candidate is presumed to be for the purpose of influencing the nomination or election of the candidate whether or not that nomination is expressly advocated. This conclusion is consistent with the Board's findings in Advisory Opinions 65 and 70, issued to Representative Knickerbocker and Common Cause/Minnesota, respectively.

3. If the attached literature is not campaign literature and a candidate receives the piece in bulk quantities, does he have to reprort it as an in-kind contribution on his Ethical Practices Statement?

3. If the candidate's committee distributes the attached literature, the expense is a campaign expenditure and should be reported in an appropriate fashion. If, for instance, the committee purchases the material, the cost of the purchase would be reported as a campaign expenditure. If the committee picks up one free copy of the material and reproduces and distributes it, the costs involved in reproduction and distribution would be a campaign expenditure.

If the organization producing the material did so with the authorization or expressed or implied consent of, or in cooperation or in concert with, or at the request or suggestion of that candidate, his principal campaign committee or his agent, then the organization's cost of producing and distributing the literature is to be treated as an approved expenditure on behalf of that candidate, and thus as a donation in kind and a contribution to the candidate. *Minn. Stat.* 10A.01,

subds. 7, 7b, and 10a (1978).[1/] The expenditure would therefore be reported by the candidate's committee. If the organization making such an approved expenditure is an "association" within the meaning of *Minn. Stat.* 10A.01, subd. 3 (1978), and if the contribution has a fair market value in excess of $100, then the organization would also be required to register a political fund and to report the contribution/approved expenditure. *Minn. Stat.* 10A.12, 10A.14, 10A.20 (1978).

If the organization producing the material makes it freely available in bulk quantities to anyone who wishes to use it, and if bulk quantities are made available to a candidate in this manner, the organization need not register or report, but the candidate's principal campaign committee using the literature must estimate the fair market value of the material and report that amount as a campaign expenditure.

4. If the attached literature is not campaign literature, does the use of it by a candidate for public office require approval by the group who publishes it?

4. As described above, the Board finds that when the attached material is used by a principal campaign committee, it is to be considered a campaign expenditure. The campaign expenditure is to be reported in an appropriate fashion. *Minn. Stat.* 10A (1978) does not require the candidate to obtain the consent of the publishing organization before using the material. However, we express no opinion on any possible application of *Minn. Stat.* 210A.02, 210A.03, or other provisions of Ch. 210A, or of copyright or other laws.

[1/] In this regard, we call attention to *Minn. Stat.* 210A.34 (1978), which generally prohibits corporate contributions. Because this statute is beyond the scope of the Board's jurisdiction, we express no opinion concerning its application here.

Issued to:

John R. Stone, Editor
Pope County Tribune
Glenwood, MN 56334

Approved:

August 15, 1980

RE: Conflict of Interest - Cable Communications Board Member

ADVISORY OPINION #72

SUMMARY

72. The editor of a newspaper who is a member of the Minnesota Cable Communications Board has a potential conflict of interest in his public official capacity if the newspaper he edits intends to purchase, develop or operate a cable system after the Cable Communications Board repeals a rule prohibiting a newspaper from owning a cable system, therefore a statement of potential conflict of interest should be filed.

TEXT

You have asked the Ethical Practices Board for an opinion, based on the following hypothetical situation:

FACTS

You are a Chairman, Minnesota Cable Communications Board. The Cable Communications Board is a rulemaking state agency. As an appointed public official, you are subject to *Minn. Stat.* 10A.07 - Conflicts of Interest. The Cable Communications Board is being petitioned by the Minnesota Newspaper Association to change an agency rule to permit a newspaper to own a cable system. The newspaper you edit is a member of the Minnesota Newspaper Association.

You as the following questions:

QUESTIONS

1. Do I have a conflict of interest?

2. If I do, what is the most appropriate path of conduct I should follow as this matter comes before the MCCB?

   a) Is it appropriate to participate in discussion?

   b) Is it appropriate or necessary to surrender the chair when this issue is before the board?

OPINION

1. In the opinion of the Board a conflict of interest is present when a public official is required to make a decision which would directly affect his own financial interests or those of a business with which he is associated. Based

upon the facts in this case, it is the Board's opinion that a conflict of interest would be present if the newspaper you edit either intended to purchase, develop or operate a cable system after the rule prohibiting a newspaper cable ownership is repealed, or conversely took a strong position against this rule's repeal. If the business with which you are associated has no financial interest in cable systems, or had no intention of owning or operating a cable system, then there appears to be no conflict of interest.

2. If you decide on your own assessment that there is a conflict of interest, then pursuant to EC 304(a)(2)(cc), you should not participate in any vote or offer any motion on the matter. You should also give up the chair if you believe a potential conflict of interest exists.

Issued to:

Approved:

Michael L. Flanagan, Esq.
2350 IDS Center
Minneapolis, MN 55402

September 19, 1980

William F. Brooks, Jr., Esq.
900 Midland Bank Building
Minneapolis, MN 55401

RE: Corporate Ballot Question

ADVISORY OPINION #73

SUMMARY

73. A corporation may spend money to promote or defeat a ballot question either by registering its own political fund or by contributing to an already registered political fund.

FACTS

You have requested the Board to answer the following questions:

Q) For account keeping and reporting purposes under Chapter 10A, Minnesota Statutes, how are contributions to political funds for statewide ballot questions to be handled in the following cases:

1) Individual contributions to a political fund?

A) Individual contributions made to funds organized solely to promote or defeat ballot questions are to be handled in the same way as are individual contributions to any other political committee or fund covered by the provisions of Chapter 10A. Individuals who make contributions to political committees and funds are not required to register with the Ethical Practices Board. Chapter 10A.27 limits the amount a principal campaign committee may accept from an individual, political committee or fund. There are no limits on what an individual may give to a non-candidate political committee or fund. The political committees and funds are required to record, to report and disclose individual contributions as specified in 10A.13 and 10A.20.

2) Corporate contributions made to an established political fund?

A) According to Chapter 210A.34, subd. 1b:

"A corporation doing business in this state may make contributions or expenditures to promote or defeat a ballot question, to qualify a question for placement on the ballot unless otherwise prohibited by law, or to express its views on issues of public concern. But no such contribution shall be made to any candidate for nomination, election or appointment to a political office or to any committee organized wholly or partly to promote or defeat such a candidate."

The Board finds that a corporation may spend money to promote or defeat ballot questions either by registering its own political fund or by contributing to an already registered political fund which will itemize that contribution if it is in excess of $100. Funds accepting money from corporations may not contribute to candidates.

The Board also requests that the legislature interpret *Minn. Stat.* Chapter 10A.12, subd. 1 as it relates to corporate expenditures to promote or defeat ballot questions.