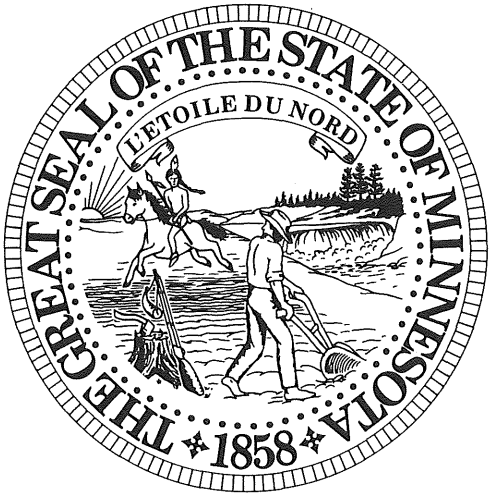
A D V I S O R Y O P I N I O N S

(Under Minn. Stat. § 10A.02, Subds. 8 and 12)

October 3, 1991 - August 7, 1992

Numbers 112 - 124



A U G U S T, 1 9 9 2

MINNESOTA STATE ETHICAL PRACTICES BOARD
1ST FLOOR S., CENTENNIAL BLDG., 658 CEDAR STREET
ST. PAUL, MN 55155-1603; (612) 296-5148

Pursuant to MS 10A.02, sd 8 and 12

TABLE OF CONTENTS

ABOUT ADVISORY OPINIONS

- The Ethical Practices Board is authorized to issue advisory opinions on the requirements of the Ethics in Government Act, Minn., Stat. Ch. 10A, enacted in 1974, (see Minn. Stat. §10A.02, subd. 12) and the Hennepin County Disclosure Law (see Minn. Stat. § 383B.055). Individuals or associations may ask for advisory opinions about these laws to guide their actions in compliance with Minn. Stat. Ch. 10A and Minn. Stat. §§ 383B.041 - 383B.058.

- A request for an advisory opinion is published in the State Register before action is taken by the Board to approve an opinion. Public comment is invited. A summary of each approved advisory opinion is published in the State Register; full texts of opinions are available for public inspection in the Board office, 1st Floor S., Centennial Bldg., 658 Cedar St., near the State Capitol in St. Paul.

- An advisory opinion lapses the day the regular legislative session adjourns in the second year following the date of the opinion (Minn. Stat. §10A.02, subd. 12).

ABOUT THE BOARD

Mission Statement

- To promote public confidence in the state government decision making through development and administrtion of disclosure, public financing, and enforcement programs which will ensure public access to information filed with the Board.

Members

- Six member citizen body;
- Appointed by the governor; confirmed by a 3/5th vote of both houses of the legislature;
- One former legislator of each major party;
- Two individuals who have not been a public official or a political party officer in the last three years before appointment to the Board;
- No more than three members of the same political party;
- No lobbyist may be appointed to the Board.

An Advisory Opinion Index is available at the Board office.

Issued to:

Approved:

Betty Backes, City Clerk
City of Coon Rapids
1313 Coon Rapids Boulevard
Coon Rapids, MN 55433-5397

October 3, 1991

RE: Local Officials

ADVISORY OPINION #112

SUMMARY

112. A city located in the seven-county metropolitan area must begin to comply with the economic interest disclosure provisions of Minn. Stat. Ch. 10A on the date that the official federal decennial census shows a population of over 50,000. The city council must designate the local official who will be responsible for administering economic interest disclosure by local officials serving therein.

FACTS

You cite Minn. Stat. § 10A.01, subd. 26, which defines a metropolitan governmental unit as a city with a population of over 50,000. You state that the City of Coon Rapids has received the preliminary 1990 Census population estimate of 52,978. You further state that you have not received the official notice of the final figure but assume the foregoing figure to be fairly accurate.

You ask the Board the following questions:

1) At what point should the City of Coon Rapids begin to comply with the filing of Statements of Economic Interest in accordance with Minn. Stat. § 10A.09 which does not provide transition language for cities reaching a population of over 50,000?

2) What is the date on which the City of Coon Rapids must begin to comply with the provisions of Minn. Stat. § 10A.09?

3) Who is the "responsible authority" for collecting the economic interest disclosure for the City of Coon Rapids?

PERTINENT STATUTES

"Local official" means a person who holds elective office in a political subdivision or who is appointed to or employed in a public position in a political subdivision in which the person has authority to make, to recommend, or to vote on as a member of the governing body, major decisions regarding the expenditure or investment of public money. Minn. Stat. § 10A.01, subd. 25 (1990).

A city with a population of over 50,000 located in Anoka County, one of the seven counties in the metropolitan area as defined in Minn. Stat. § 473.121, subd. 2, is deemed to be a "metropolitan governmental unit." Minn. Stat. § 10A.01, subd. 26 (1990).

"Political subdivision" includes a municipality as defined in section 471.345, subd. 1. Minn. Stat. § 10A.01, subd. 27 (1990). Section 471.345, subd. 1, states that the term municipality includes a city.

An individual must file a statement of economic interest within 60 days of accepting employment as a local official in a metropolitan governmental unit or within 14 days after filing an affidavit of candidacy or petition to appear on the ballot for an elective local office in a metropolitan governmental unit. Any official who nominates or employs a local official required to file a statement of economic interest must notify the Ethical Practices Board of the name of the individual and the date of the affidavit, petition, or nomination. A local official required to file a statement of economic interest shall file the statement with the governing body of the official's political subdivision. The governing body shall maintain the statements that are filed under the provisions of Minn. Stat. § 10A.09 as public data. Minn. Stat. § 10A.09 (1990).

OPINION

Minn. Stat. Ch. 10A, as amended in 1990, requires certain disclosure by candidates for and holders of local elective office and by local officials employed in a city with a population of over 50,000 located entirely in one of the seven counties in the metropolitan area. Minn. Stat. §§ 10A.01, subds. 26 and 27, and 10A.09 (1990).

Minn. Stat. § 10A.01, subd. 26, does not provide the means for a city to determine when its population exceeds 50,000. The Board notes that Minn. Stat. § 645.44, subd. 8 (1990) provides that the word "population" means that population shown by the last preceding decennial census unless otherwise expressly provided. Therefore, it is the opinion of the Board that the City of Coon Rapids must begin to comply with Minn. Stat. § 10A.09 on the date that the official decennial census shows a population of over 50,000. Until the City receives the official final population figure for the 1990 decennial census, the population shown by the 1980 census prevails. If the official 1990 census reports the city's population over 50,000, the city must begin complying with Minn. Stat. § 10A.09.

Minn. Stat. § 10A.09 as amended in 1990 does not specify the date by which elected and appointed local officials who are in office in a metropolitan governmental unit must begin to comply with economic interest disclosure requirements. It is the opinion of the Board that all elected local officials and all appointed local officials as defined in Minn. Stat. § 10A.01, subd. 25 (1990) who are in office in the City of Coon Rapids on the date that the official decennial census shows a population of over 50,000 must file with the city clerk an original Statement of Economic Interest within sixty (60) days thereafter. All candidates for a city office to be elected in the year when the official decennial census figure shows a population of over 50,000 must file an original statement of economic interest within fourteen (14) days thereafter. The foregoing filing dates are consistent with related provisions of Minn. Stat. § 10A.09, subd. 1 (1990) and transition periods specified in other laws, such as Minn. Stat. § 383B.053, subd. 1 (1990).

In regard to procedures for distributing and receiving the statements required, the Board suggests that the Coon Rapids city council direct the city clerk to perform the functions for local officials similar to the functions that the Board performs for "public officials" under Minn. Stat. §§ 10A.02, subd. 8, and 10A.09. The Board suggests that the city clerk adapt for use with Coon Rapids' local officials certain procedures outlined in the Board's administrative rules governing public officials' economic interest disclosure as set forth in Minn. Rules Ch. 4505 (1991).

Because the Board is directed to secure local officials' compliance with the disclosure provisions of Minn. Stat. § 10A.09, the Board requests that the city clerk of Coon Rapids notify the Board of the name, address, and office held (or sought, in the case of a candidate for local elective office) of any individual

Issued to:

The Honorable Arne H. Carlson
Office of the Governor
St. Paul, MN 55155

Approved:

August 22, 1991

RE: Contribution

ADVISORY OPINION #113

SUMMARY

113. The interchange of a private industry employee with state government is not a contribution to a candidate within the meaning of Minn. Stat. § 10A.01, subds. 7, 7a, and 7b (1990).

FACTS

You state that on August 5, 1991, Connie Levi commenced service as interim Chief of Staff in the Office of the Governor. You further state that Ms. Levi was asked to undertake that role after the resignation of the former Chief of Staff to provide her management, executive, and administrative skills for the period of the search for and appointment of a new Chief of Staff.

You state that the State of Minnesota has entered into an interchange of an employee with private industry pursuant to Minn. Stat. § 15.59. You point out that the Minneapolis Chamber of Commerce is the sending agency and the State of Minnesota is the receiving agency, for purposes of the interchange. You further state that the Chamber is paying Ms. Levi's salary and benefits for the period of the interchange.

You ask the Board's opinion on whether this interchange of an employee with private industry is a contribution within Minn. Stat. ch. 10A.

PERTINENT STATUTES

"Contribution" means a transfer of funds or a donation in kind. Minn. Stat. § 10A.01, subd. 7 (1990).

"Transfer of funds" . . . means money or negotiable instruments given by an individual or association to a . . .principal campaign committee for the purpose of influencing the nomination or election of a candidate . . . Minn. Stat. § 10A.01, subd. 7a (1990). (emphasis added)

"Donation in kind" means anything of value other than money or negotiable instruments given by an individual or association to a . . . principal campaign committee for the purpose of influencing the nomination or election of a candidate . . . Minn. Stat. § 10A.01, subd. 7b (1990). (emphasis added)

OPINION

The interchange of a private industry employee with the State of Minnesota pursuant to Minn. Stat. § 15.59 (1990) for an official state position performing work in the interest of the State is not for the purpose of influencing the nomination or election of a candidate. Therefore, the payment of the employee's salary and benefits during the period of the interchange is not a contribution within the meaning of Minn. Stat. § 10A.01, subds. 7, 7a, and 7b (1990).

required to file a statement of economic interest under Minn. Stat. § 10A.09. The Board further requests that the city clerk notify the Board about any individual who fails within the prescribed time to file with the city clerk a statement of economic interest required by Minn. Stat. § 10A.09. Upon receipt of the latter notice, the Board will proceed with official notifications as prescribed by Minn. Stat. § 10A.09, subd. 7, to secure the required filing.

Issued to:

Approved:

Harley M. Ogata, Staff Attorney
Minnesota Education Association
41 Sherburne Avenue
St. Paul, MN 55103-2196

December 9, 1991

RE: Campaign Finance Disclosure

ADVISORY OPINION #114

SUMMARY

114. A political fund established by an association that screens and endorses candidates or by any local of that association may make cash contributions to the association's endorsed candidates as well as independent expenditures on behalf of the association's endorsed candidates provided the independent expenditures comport with the statutes governing independent expenditures set forth in Minn. Stat. §§ 10A.01, subd. 10b, 10A.12, 10A.14, 10A.17, and 10A.20.

FACTS

You state that you are writing on behalf of the Minnesota Education Association ("MEA") and IMPACE-MEA, its registered political fund to request an advisory opinion pursuant to Minn. Stat. § 10A.02, subd. 12, to provide guidance to the MEA and IMPACE-MEA regarding their conduct during the forthcoming election year.

You further state that the MEA is an unincorporated association with approximately 47,000 members in Minnesota most of whom are public school teachers. You state that the MEA through IMPACE-MEA intends to endorse candidates for virtually all state offices in Minnesota that will be on the ballot in 1992, after screening candidates to determine their positions on issues of importance to the MEA and its membership. You further state that IMPACE-MEA also intends to make cash contributions to the principal campaign committees of all endorsed candidates.

You state that communication with its membership is essential to the MEA and that the ability to communicate with its membership concerning issues of common concern, including political issues, is essential to the MEA's existence. You state that during the school year the MEA publishes a monthly newsletter that is distributed to its membership. You further state that during the forthcoming election year the MEA intends to report in its newsletter as a news item the results of the IMPACE-MEA endorsing convention that will occur in the summer. You state that in 1992 the MEA plans to focus on election issues in a regular edition of its newsletter to be published shortly before the election and to urge the membership to vote for named endorsed candidates.

You further state that IMPACE-MEA intends to produce brochures and leaflets regarding endorsed candidates and to distribute them to the MEA's membership without any authorization, consent, or cooperation from the candidates.

You state that the MEA's locals are truly independent of the state organization and that they have their own budgets not subject to the control of the MEA or IMPACE-MEA. You further state that MEA's locals have full authority to communicate with their members on political and other issues and to support candidates of their choice.

You state that the questions you ask the Board concern primarily what, if anything, Chapter 10A requires of the MEA, its locals, or IMPACE-MEA regarding the allocation and reporting to the Board of expenses incurred in making partisan communications to MEA members and whether the MEA, its locals, or IMPACE-MEA can make independent expenditures on behalf of endorsed candidates.

You ask the Board the following questions:

QUESTION ONE

Must the MEA obtain written authorization under Minn. Stat. § 10A.17, subd. 2, from the treasurers of principal campaign committees of endorsed candidates before it can report in its newsletter the results of the IMPACE-MEA endorsing convention, assuming that the report will be made without the authorization, consent, or cooperation of any candidate? That is, can the cost of printing that portion of the MEA's regular newsletter be an independent expenditure, with the appropriate disclaimer?

OPINION

If the Minnesota Education Association (MEA) newsletter report of the results of IMPACE-MEA's endorsing convention is made without the authorization, consent, or cooperation of any candidate, in accordance with the provisions of Minn. Stat. § 10A.01, subd. 10b, and the disclosure requirements of Minn. Stat. § 10A.17, subd. 4, the cost would be an independent expenditure. Because the MEA is the supporting association identified on IMPACE-MEA's registration as a political fund, IMPACE-MEA must report the costs of the MEA independent expenditures as provided in Minn. Stat. § 10A.20 (1990).

Minn. Stat. § 10A.17, subd. 2, applies to an approved expenditure. Approved expenditure is an expenditure made with the authorization or expressed or implied consent of, or at the request or suggestion of that candidate or the candidate's agent. Minn. Stat. § 10A.01, subd. 10a. In contrast, an independent expenditure means an expenditure expressly advocating the election or defeat of a clearly identified candidate made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, any candidate or any candidate's principal campaign committee or agent. Minn. Stat. § 10A.01, subd. 10b (1990). An independent expenditure is not a contribution to that candidate. Id. If the expenditure is an independent expenditure, no written authorization from the candidate's treasurer is required.

QUESTION TWO

Can the cost of printing that portion of the MEA's regular pre-election issue of its newsletter that urges the membership to vote for candidates endorsed by IMPACE-MEA qualify as an independent expenditure, if there is
no authorization, consent, or cooperation from the endorsed candidates in connection with the publication of the issue?

OPINION

To the extent that the portion of the MEA's regular pre-election issue of its newsletter urging the membership to vote for IMPACE-MEA candidates is prepared and published in accordance with the provisions of Minn. Stat. § 10A.01, subd. 10b, and the disclosure requirements of Minn. Stat. § 10A.17, subd. 4, then the cost of printing and distributing the newsletter must be reported by IMPACE-MEA under the independent expenditure provisions of Minn. Stat. § 10A.20.

QUESTION THREE

If the costs of publication in the MEA's newsletter of information either reporting the endorsement of candidates by IMPACE-MEA or urging the election of candidates endorsed by IMPACE-MEA must be in the form of approved expenditures, and thereby contributions to the candidates named, and assuming that the costs exceed $100, must the MEA itself register with the Board as a political committee or can IMPACE-MEA obtain the necessary written authorization from campaign committee treasurers, reimburse the MEA for the allocable portion of the newsletters and report the approved expenditures as contributions to the affected committees? If the MEA must register as a political committee, would its contributions be accumulated with those of IMPACE-MEA, subject to a single contribution limitation? Could the MEA establish more than one political fund with contribution limits separate from those of IMPACE-MEA? If the publication costs can be independent expenditures, and they exceed $100, by whom are they reported?

OPINION

No individual or association may make an approved expenditure of more than $20 without receiving written authorization as to the amount that may be spent and the purpose of the expenditure from the treasurer of the principal campaign committee of the candidate who approved the expenditure. Minn. Stat. § 10A.17, subd. 2 (1990). An approved expenditure may take the form of a donation in kind which is defined as anything of value other than money or negotiable instruments given by an individual or association to a principal campaign committee for the purpose of influencing the nomination or election of a candidate. Minn. Stat. § 10A.01, subd. 7b (1990).

It is the opinion of the Board that because IMPACE-MEA, a political fund, lists the MEA as its supporting association on its registration as filed with the Board, the MEA in essence has established and registered a political fund in accordance with Minn. Stat. §§ 10A.12 and 10A.14. If MEA decides to seek authorization of its expenditures on behalf of candidates, IMPACE-MEA could proceed to obtain the written approvals specified in Minn. Stat. § 10A.17, subd. 2, and report the costs of the allocable portions of the newsletters as approved expenditures to the affected candidates in accordance with Minn. Stat. §§ 10A.20 and 10A.22, subd. 5 (1990).

The Board cautions that the provisions of Minn. Stat. § 10A.29 may apply to the establishment of more than one of political fund by an association if, for example, the proliferation of political funds is an attempt to circumvent the provisions of Chapter 10A by redirecting funds through or contributing funds on behalf of another association.

QUESTION FOUR

Can IMPACE-MEA make independent expenditures on behalf of endorsed candidates in the form of brochures and leaflets distributed to the MEA's membership promoting the election of endorsed candidates to whom IMPACE-MEA has made cash contributions, assuming that the publication of such brochures and leaflets is done without the authorization, consent, or cooperation of the candidates? For example, IMPACE-MEA would not ask the candidate or his or her committee for a photograph or any other information to be used in such brochures or leaflets.

OPINION

Yes. IMPACE-MEA may make independent expenditures on behalf of endorsed candidates in the form of brochures and leaflets distributed to the MEA's membership promoting the election of endorsed candidates to whom IMPACE-MEA has made cash contributions,

provided that the publication of such brochures and leaflets is done without the authorization, consent, or cooperation of the candidates.

QUESTION FIVE

Can MEA locals make independent expenditures on behalf of candidates endorsed by IMPACE-MEA in the form of communications to their members urging the election of such candidates? If the Board response is that as a matter of law if such expenditures are made, they can be made only in the form of approved expenditures, should each local that spends more than $100 on such communications register a political fund with the Board? Must such contributions be accumulated with contributions made by the MEA or IMPACE-MEA and reported by the MEA or IMPACE-MEA? If such independent expenditures can be made by a local, and they exceed $100, must the local register a political fund to report them?

OPINION

If MEA locals operate independently from the Minnesota Education Association, each local that makes approved expenditures or independent expenditures or both totaling more than $100 must register with the Board a political fund, make the expenditures from that fund, and file periodic reports of the fund's receipts and expenditures. Minn. Stat. §§ 10A.12, 10A.14, and 10A.20. It is the opinion of the Board that the Ethics in Government Act does not require candidates to aggregate the contributions from separate political funds when determining the application of contribution limits. However, the Act requires a candidate to aggregate contributions from a political party and to aggregate the contributions received from another candidate's principal campaign committee or any other committee bearing the contribution candidate's name or title or otherwise authorized by the contributing candidate for purposes of
compliance with the applicable contribution limit. Minn. Stat. § 10A.27, subd. 9 (1990).

QUESTION SIX

You state that the MEA and IMPACE-MEA have particular concern about the views expressed in Advisory Opinion No. 63 that was issued by the Board on August 1, 1980. You state that the referenced opinion concluded that a candidate's appearance at a pre-endorsement interview should not be construed as a request or suggestion [by that candidate] that the endorsing organization make an expenditure on behalf of the candidate. You further state that the referenced opinion also concluded that the candidate's appearance "set in motion" the application of the disclosure and allocation provisions of Minn. Stat. § 10A.17, subd. 2., if and when the endorsing organization decided to prepare and distribute a sample ballot on behalf of candidates. You have asked the Board to reconsider the foregoing conclusions and to tell the MEA and IMPACE-MEA whether the Board still views this advice to be valid.

OPINION

A candidate's appearance at a pre-endorsement interview should not be construed as a request or suggestion by that candidate to the endorsing association for the association to make an expenditure on behalf of the candidate.

If the registered political fund established by the endorsing association decides to make an independent expenditure on behalf of that candidate, the fund must follow the disclosure requirements of Minn. Stat. § 10A.17, subd. 4 (1990). The cited provision does not require the approval by or the allocation of costs to the candidate because an independent expenditure is not a contribution to a candidate. Minn. Stat. § 10A.01, subd. 10b (1990).

Inasmuch as the foregoing opinion may conflict with certain views expressed by the Board in Advisory Opinion No. 63, the interpretation of Ch. 10A herein stated supersedes the previous opinion. The Board notes that in accordance with Minn. Stat. § 10A.02, subd. 12, as amended in 1978, Advisory Opinion No. 63 lapsed when the legislature adjourned in 1982. Moreover, during the period while the stated opinion was in effect, the opinion applied only to the association requesting the opinion and only to the facts as stated in the association's advisory opinion request.

Issued to:
Erik A. Ahlgren, Esq.
Dorsey and Whitney Law Office
2200 First Bank Place East
St. Paul, MN 55402-1498

Approved:

December 9, 1991

RE: Campaign Finance Disclosure

ADVISORY OPINION #115

SUMMARY

115. Solicitation of contributions to candidates by an association's employee may require registration of a political fund established by the association. If the association is a corporation organized for profit, state laws prohibiting direct or indirect corporate contributions to candidate may apply to the association's activities.

FACTS

You state that you are an attorney representing a corporation which does not have a Minnesota registered political committee affiliated with it. You state that the director of government relations for the corporation solicits contributions from employees of the corporation to be given to certain Minnesota public officials. You further state that on an entirely separate occasion the director of government relations solicits officers of other companies within the industry to solicit contributions from employees of their respective companies to be given to a different set of Minnesota public officials. You state that in both cases the contributions from employees are voluntary but the employees understand that the future success of their employers may be benefitted by access to Minnesota public officials.

You state that the solicitations made by the director of government relations are primarily made by telephone or letter and that the total cost of the telephone calls and letters is estimated to be less than $100 and the total time to make the solicitations is estimated to be eight hours. You further state that some of the solicitations of officers of other companies in the industry are made in person after the director of government relations flies to an industry meeting. You state that the director of government relations would have attended the industry meeting regardless of the opportunity to make a solicitation of contributions and that the cost of the airfare to the meeting is in excess of $250. You further state that although the meeting takes over eight hours, less than one hour is devoted to solicitations of contributions.

You ask the Board the following questions:

QUESTION ONE

Is a "political committee" within the meaning of Minn. Stat. § 10A.01, subd. 15, created where the director of government relations solicits contributions from employees of the corporation?

OPINION

The activities of the corporation's director of government relations may require registration of a political fund, not a political committee because the

corporation's major purpose is one other than to influence the nomination or election of one or more candidates in Minnesota. A "political committee" as defined in Minn. Stat. § 10A.15 (1990) includes a group of two or more individuals whose major purpose is to influence the nomination or election of candidates for state elective office. Minn. Stat. §§ 10A.01, subds. 3, 15, 16, 10A.12, and 10A.14 (1990); Minn. Rules pt. 4500.3300 (1991).

QUESTION TWO

If the answer to Question 1 is yes:

(a) Is the political committee required to register with the Board under Minn. Stat. § 10A.14?

(b) Does Minn. Stat. § 10A.15, subd. 3b, require the attribution of contributions from the solicited employees to the political committee?

(c) Has the corporation which employs the director of government relations made an illegal in-kind contribution to the political committee?

OPINION

Assuming that the activities described in Question One may require registration of a "political fund," the Board responds to each part of Question Two as follows:

(a) Yes. A political fund must be registered within fourteen days after the fund receives contributions or makes expenditures in aggregate more than $100 in a calendar year to influence the nomination or election of one or more candidates in Minnesota. The registration must disclose the name and address of the corporation supporting the fund. Minn. Stat. §§ 10A.01, subds. 3, 16; 10A.12; and 10A.14 (1990).

(b) If the political fund was organized or is operated primarily to direct contributions other than from its own funds to one or more candidates or principal campaign committees, then contributions made to a candidate or principal campaign committee that are so directed must be reported as attributable to the political fund and count toward the contribution limits of that political fund as specified in Minn. Stat. § 10A.27. Minn. Stat. § 10A.15, subd. 3b (1990).

(c) Minn. Stat. § 211B.15 provides that a corporation organized for profit doing business in Minnesota may not make a contribution directly or indirectly to promote or defeat the candidacy of an individual for nomination or election. "Contribution" includes money, property, free service of a corporation's officers or employees, or thing of monetary value. A corporation which employs the director of government relations and provides support for a political fund may be subject to the penalties for corporate political contributions set forth in state law, including Minn. Stat. § 211B.15 (1990). The Board provides this factual information pursuant to Minn. Stat. § 10A.02, subd. 9, (1991 Minn. Laws, Ch. 349, Sec. 5).

QUESTION THREE

Is a "political committee" within the meaning of Minn. Stat. § 10A.01, subd. 15, created where the director of government relations solicits officers of other companies to solicit contributions from employees of their corporations?

QUESTION FOUR

If the answer to Question 3 is yes:

(a) Is the political committee required to register with the Board under Minn. Stat. § 10A.14?

(b) Does Minn. Stat. § 10A.15, subd. 3b, require the attribution of contributions from the solicited employees to the political committee?

(c) Has the corporation which employes the director of government relations made an illegal in-kind contribution to the political committee?

QUESTION FIVE

If the answers to Questions 1 and 3 are both yes, does Minn. Stat. § 10A.15, subd. 3b, require the attribution of contributions from all the solicited employees to a single political committee?

OPINION

Please see the responses to Questions One and Two, above. The cost of the activities of the director of government relations may require registration of a political fund regardless of the identity of the employer of the individuals solicited.

If the political fund established by the corporation you describe was organized or is operated primarily to direct contributions other than from its own funds to one or more candidates or principal campaign committees, then contributions made to a candidate or principal campaign committee that are so directed must be reported by the candidate as attributable to the political fund and count toward the contribution limits of that political fund as specified in Minn. Stat. § 10A.27. Minn. Stat. § 10A.15, subd. 3b (1990).

A corporation which employs the director of government relations and provides support for a political fund may be subject to the penalties for corporate political contributions set forth in state law, including Minn. Stat. § 211B.15 (1990). The Board provides this factual information pursuant to Minn. Stat. § 10A.02, subd. 9 (1991 Minn. Laws, Ch. 349, Sec. 5).

QUESTION SIX

Would the answer to either Question 1 or 3 change if there was a pattern of similar solicitations?

OPINION

No. If the solicitations described in Questions One or Three extend beyond the initial solicitations, e.g., monthly, quarterly, annually, the treasurer must continue to file the periodic reports at the times specified by law until the fund terminates. If the solicitations occur entirely within a single reporting period and do not continue, the committee may terminate at the time the treasurer files the fund's initial report. Minn. Stat. §§ 10A.20, 10A.24, and 10A.242 (1990).

QUESTION SEVEN

Is the director of government relations a "lobbyist" within the definition of Minn. Stat. § 10A.01, subd. 11, based solely on his solicitation of contributions from employees of his own corporation?

QUESTION EIGHT

Is the director of government relations a "lobbyist" within the definition of Minn. Stat. § 10A.01, subd. 11, based solely on his solicitation of officers of other companies in the industry to solicit contributions from employees of their companies?

OPINION

No. Time and money spent soliciting contributions to candidates are not included in the criteria requiring lobbyist registration under Minn. Stat. § 10A.01, subd. 11. The law excludes "contributions to a candidate" from the items that a lobbyist must report. Minn. Stat. § 10A.04 (c) (1990).

QUESTION NINE

Is the director of government relations a "volunteer" within the meaning of Minn. Stat. § 10A.01, subd. 7?

OPINION

Services provided by an individual volunteering personal time on behalf of a candidate or political fund are not considered to be a contribution to the candidate or political fund provided the individual is not compensated for that time by any individual or association. Minn. Stat. § 10A.01, subd. 7 (1990).

If the director of government relations solicits contributions to candidates on time paid by the corporation, the director's services must be considered to be a contribution to the candidates or the fund or both. The gross value of compensation in excess of $20 for the director's services on behalf of candidates or the political fund or both is a donation in kind from the corporation making the payment. Minn. Stat. §§ 10A.01, subd. 7b, 10A.20 (1990); Minn. Rules pt. 4500.3400 (1991).

However, a corporation organized for profit and doing business in Minnesota may not make a donation in kind to a candidate or, for example, to a political fund. Minn. Stat. § 211B.15 (1990). If such a corporation makes a donation in kind to a candidate, the corporation may be fined $40,000 and, if a Minnesota-domiciled corporation, may be dissolved, or if domiciled outside of Minnesota, may lose its right to do business in Minnesota. Minn. Stat. § 211B.15, subd. 7 (1990).

A corporation's employees may establish and register an independent political committee provided the corporation does not furnish financial assistance to the political committee, directly or indirectly. However the employees may use the name of the corporation when registering their committee with the Board. Minnesota Association of Commerce and Industry (MACI) v. Foley, 316 N.W. 2d 524 (Minn. Sup. Ct. 1982).

Issued to:
Carol G. Wiessner, Esq.
Project Environment Foundation
26 East Exchange Street, Suite 206
St. Paul, MN 55101-2264

Approved:

December 9, 1991

RE: Lobbying Disclosure

ADVISORY OPINION #116

SUMMARY

116. A lobbyist must report total disbursements by the lobbyist, the lobbyist's employer, the lobbyist's principal, and the lobbyist's employee as required by Minn. Stat. § 10A.04. The lobbyist must disclose whether the lobbying-purpose portion of the lobbyist's compensation exceeds $500 in a year, however neither the lobbyist nor the lobbyist principal must disclose the dollar amount of the compensation when filing required reports.

FACTS

You state that you are the staff attorney for Project Environment Foundation (PEF) and that PEF requests an advisory opinion from the Board to guide its compliance with Minn. Stat. Ch. 10A. You further state that PEF requests in writing answers to questions regarding the recordkeeping requirements of a lobbyist's expenses and the computation and reporting of an employee's salary for hours spent doing administrative lobbying. You state that PEF seeks clarifications from the Board to confirm its internal process of tracking those hours spent by employees in the course of administrative lobbying for reporting purposes.

You ask the Board the following questions:

QUESTION ONE

For the purpose of answering question #2 on the Lobbyist Disbursement Report, form ET-7, as to "Total Disbursements From Schedule A," if the lobbyist has not made any disbursements from her own personal funds, and therefore is not required to complete and file form ET-29 with the Board, but rather through her employer and principal (in this case PEF) has received total disbursements in some of the categories listed in "Schedule A - Total Lobbying Disbursements Paid From Personal Funds" (which include: preparation & distribution of lobbying materials, media advertising, telephone, postage, and etc...), does the lobbyist report the total of these disbursements as the answer to Question #2 despite the fact that such disbursements were attributable to her employer or principal and not from her own personal funds?

OPINION

Yes. A lobbyist reports for the reporting period on Schedule A of form ET-7 the total amount spent by the lobbyist, the lobbyist's employer, the lobbyist's principal, and the lobbyist's employee as applicable in each of the nine categories listed. In the space provided on Schedule A, the lobbyist enters the total amount spent in each category to influence each of the three kinds of action listed: legislative action, administrative action, official actions of metropolitan governmental units. If a lobbyist makes a disbursement that was later reimbursed by the lobbyist's employer or principal, the lobbyist includes this amount in the total appropriate to the category and kind of lobbying on Schedule A.

After completing Schedule A, a lobbyist totals the amounts listed in each of the three kinds of action and enters at "Total Disbursements from Schedule A" on page one of the report the amounts from Schedule A corresponding to the kinds of action.

A lobbyist who makes reportable disbursements from the lobbyist's own personal funds that are not attributable to any of the lobbyist's clients should report those disbursements on form ET-29 and "X" box 10 on page one of the Lobbyist Disbursement Report, form ET-7.

QUESTION TWO

For the purpose of answering question #5 on the Lobbyist Disbursement Report, form ET-7, as to whether a lobbyist has been paid more than $500 in the calendar year in salary as compensation for lobbying purposes on behalf of the association (in this case PEF), is it correct to add up only those hours specifically devoted to an employee's time spent working on an administrative action (in this case, PEF employee's work on a rulemaking reviewing proposed rules, drafting comments, etc...) from the time the administrative action commences, which is upon publication of notice in the **State Register** until the proposed rule is finally adopted?

OPINION

No. Minn. Rule pt. 4510.1100 (1991) provides that for purposes of registration and reporting lobbyist activity, an administrative action commences in administrative rulemaking when a state agency publishes a notice in the **State Register** of the agency's intent to solicit outside opinions under Minn. Stat. § 14.10, or takes such other formal action provided by law to commence the rulemaking process. Therefore, the calculation of the employee's time may begin long before the publication of a notice of hearing or notice of intent to adopt rules without a hearing.

The Board concurs that the portion of the employee's paid compensation attributable to the time spent working on administrative action would be calculated when determining whether the employee should "X" box 5 on page one of form ET-7. Indeed should the employee be paid for time spent working on legislative action or metropolitan governmental unit action in addition to administrative action, the total compensation paid to the lobbyist for these lobbying purposes would be considered in the calculation.

QUESTION THREE

Is PEF correct in understanding that an employee's time devoted to the review and analysis of draft versions of an agency's proposed rule or time spent in technical advisory committees prior to notice of publication in the **State Register** to begin the rulemaking process is not considered lobbying?

OPINION

No. Certain amendments to Minn. Stat. Ch. 10A in 1990 provide that expenditures by a lobbyist's principal for advertising, mailing, research, analysis, compilation and dissemination of information, and public relations campaigns, as well as all salaries and administrative expenses attributable to activities of the principal to influence official action, including administrative action, are reportable. Minn. Stat. § 10A.04, subd. 6 (1990). It is the Board's opinion that a principal may need to include in the annual report of the principal the allocation of an employee's time spent in review, analysis, or related research prior to the commencement of rulemaking. The Board suggests that legislative clarification of the reporting requirements imposed on lobbyist principals may be needed to provide more uniformity regarding disclosure of research and analysis for lobbying purposes.

QUESTION FOUR

Is PEF correct in understanding that once an employee determines how many hours she spent doing administrative lobbying and has calculated her compensation, if that amount is over $500 then she checks box 5 on form ET-7 and there is no need for her to report the actual dollar amount of compensation received?

OPINION

Yes. Please see response to Question Three, above, regarding the obligation of the lobbyist principal to file an annual report under Minn. Stat. § 10A.04, subd. 6 (1990) which includes the compensation paid to registered lobbyists as well as all salaries and administrative expenses attributable to the principal's activities to influence legislative action, administrative action, and the official action of metropolitan governmental units in Minnesota.

QUESTION FIVE

Similarly, is PEF correct in understanding that once these compensation calculations have been made, the principal in its report checks only the dollar category spent by the principal that calendar year --which includes compensation paid to all employees for their time spent doing administrative or legislative lobbying and any expenses related to influencing administrative or legislative lobbying --and again, there is no need to report actual dollar amounts?

OPINION

Yes. Minn. Stat. § 10A.04, subd. 6 (b) and (c). See also response to Question Four, above.

Issued to:
The Honorable Karen Clark
503 State Office Building
St. Paul, MN 55155

Approved:

December 9, 1991

RE: Fundraising During Legislative Session

ADVISORY OPINION #117

SUMMARY

117. A candidate for the legislature or for constitutional office is prohibited from soliciting or accepting any contribution from a registered lobbyist or from a political fund or from a political committee other than a political party unit from January 6, 1992, until the legislature adjourns sine die.

FACTS

You are a State Representative who has a principal campaign committee registered with the Board. You ask the Board to answer this question:

Is it permissible to hold a fundraiser during the winter recess?

OPINION

A candidate for the legislature or for constitutional office, the candidate's principal campaign committee, or any other political committee with the candidate's name or title or authorized by the candidate, shall not solicit or accept a contribution from a registered lobbyist, political committee, or political fund during a regular session of the legislature. Minn. Stat. § 10A.065, subd. 1. (1990 and 1991 Minn. Laws, Ch. 349, Sec. 9).

The cited section then provides that "regular session" does not include a special session of the legislature or the "interim between two annual sessions of a biennium." Minn. Stat. § 10A.065, subd. 2 (1990). Additionally the cited statute provides that the section does not apply to a political committee established by a state political party; by the party organization within a congressional district, county, legislative district, municipality, or precinct; by all or part of the party organization within each house of the legislature, except for individual members; by a candidate for a judicial office; or to a member of such a political committee acting solely on behalf of the committee. Minn. Stat. § 10A.065, subd. 5 (1990 and 1991 Minn. Laws, Ch. 349, Sec. 10).

Under Minn. Stat. § 645.19 (1990), the foregoing exceptions expressed in Minn. Stat. § 10A.065 exclude all other exceptions. On the last day of the 1991 legislative session, May 20, 1991, the Senate and the House of Representatives both adjourned until Monday, January 6, 1992. Journal of the House, May 20, 1991, page 8743; Journal of the Senate, May 20, 1991, page 5666. Therefore, it is the Board's opinion that, as set forth in Minn. Stat. § 10A.065, a candidate for the legislature or constitutional office is prohibited from the solicitation or acceptance of contributions from registered lobbyists or political funds or political committees, other than political party units, from January 6, 1992, until the legislature adjourns sine die in 1992.

Issued to:
Sarah Janecek, Esq.
Government Relations Group
525 Park Street
Suite 211 Capitol Office Building
St. Paul, MN 55103

Approved:

February 4, 1992

ADVISORY OPINION #118

SUMMARY

118. When an industry hosts a general tour of its operations for legislators, the costs of the tour must be reported by the industry's lobbyist and included in the annual report of the lobbyist principal if the tour disseminates information related to legislative action regardless of whether legislation related to the industry is pending in the Minnesota Legislature.

FACTS

You are registered with the Board as a lobbyist representing the Soo Line Railroad Company. You state that changes made in Minn. Stat. Ch. 10A by the 1990 Legislature raise several concerns. You further state that these concerns stem from a tour for the Minnesota House of Representatives Transportation Committee members of the "intermodal operations" of the Soo Line and Burlington Northern Railroads.

You state that on behalf of the Soo Line Railroad Company and the Burlington Northern Railroad you ask the Board the following questions:

QUESTION ONE

If an industry hosts a general tour of its operations, does the cost of that tour count as a reportable expense and an attempt "to influence legislative action" under Minn. Stat. § 10A.04, subd. 6?

OPINION

Yes. It is the Board's opinion that a general tour of an industry's operations that the industry hosts for legislators responsible for taking action on legislation related to that industry meets the disclosure requirement provisions of Minn. Stat. § 10A.04, subd. 6, if the tour disseminates information related to legislative action or constitutes a public relations campaign related to legislative action regardless of whether there is a bill related to the industry pending in the Minnesota Legislature. State law requires each lobbyist principal to report which category outlined in Minn. Stat. § 10A.04, subd. 6 (b) includes the total amount spent by the principal during the preceding calendar year to influence legislative action in Minnesota, including costs of disseminating information and public relations campaigns related to legislative action in Minnesota. Minn. Stat. § 10A.04, subd. 6 (1990).

It is the opinion of the Board that the costs of the industry tour are reportable by the industry's lobbyist as well as by the lobbyist's principal. A lobbyist is required to report the total disbursements on lobbying by the lobbyist's employer. Additionally a lobbyist is required to report the amount of each item or benefitequal in value to $50 or more provided to a public official, including a legislator, during each reporting period. The lobbyist must report the nature of

the item or benefit, the date given, and the public official's name and address. Minn. Stat. § 10A.04, subds. 3 and 4 (1990).

QUESTION TWO

Does an attempt "to influence legislative action" exist if, during that tour, no specific legislation is discussed?

OPINION

Yes. Please see the response to Question One, above. If a principal makes expenditures for compilation and dissemination of information and public relations campaigns related to legislative action, the costs must be reported regardless of whether specific legislation was discussed. Minn. Stat. § 10A.04, subd. 6 (d) (1990).

QUESTION THREE

Does the fact that the Legislature requested the tour have any bearing on its status as a reportable expense?

OPINION

No. Should a legislative committee request testimony by an expert witness, the cost of travel and lodging for the witness is reportable by the lobbyist and must be included in the annual report of the lobbyist principal. In the opinion of the Board the costs of the tour are reportable as discussed in the responses to Questions One and Two, above. Minn. § 10A.04, subd. 4; Minn. Rules pt. 4510.0500.

QUESTION FOUR

Would there be any difference in reportable status if the tour was held during the legislative interim as opposed to a legislative session?

OPINION

No. Minn. Stat. § 10A.04, subds. 3, 4, and 6 (1990).

QUESTION FIVE

You state that touring a railroad operation is unlike touring any other industry. You state that "the plant" is not under one roof but rather covers miles of railroad rights of way. You further state that the tour also involved the use of both Soo Line and Burlington Northern engines
and crews. You state that, in addition, various other operational personnel were present to explain Minnesota rail operations.

You state, finally, that if a tour is a reportable expense, you ask:

(a) What specific costs incurred by the railroads must be included?

(b) Must all the time of all the railroads' operational personnel present to explain rail operations be included as a reportable expense?

OPINION

(a) The total spent by each railroad for the tour must be reported by a lobbyist in relevant categories such as preparation and distribution of lobbying materials,

telephone and telegraph, postage, food and beverages, travel and lodging, and other disbursements. The Board suggests that each railroad should calculate its share of the costs for the equipment and crews involved in transporting the legislators, lobbyists, and others participating in the tour. This amount would be included in the "travel and lodging" category of the lobbyist disbursement report covering the period in which the tour was made.

When preparing the annual report of lobbyist principal, each railroad must include the total cost of the tour when selecting the appropriate category to report the total amount spent to influence legislative, administrative, and metropolitan governmental unit action in Minnesota in the preceding calendar year.

(b) The total spent by each railroad for the total amount spent to compensate operational personnel for the time spent to explain the company's rail operations must be reported by a lobbyist in relevant categories. This amount would be included in the "other disbursements" category of the lobbyist disbursement report covering the period in which the tour was made. The lobbyist would not include the compensation paid to any registered lobbyist for time spent attributable to the tour.

When preparing the annual report of the lobbyist principal, each railroad must include the proportion of total compensation paid to operational personnel and attributable to the tour and all compensation paid to registered lobbyists in the preceding calendar year.

Issued to:

The Honorable Ted Mondale
503 State Office Building
St. Paul, MN 55155

Approved:

February 11, 1992

RE: Potential Conflict of Interest

ADVISORY OPINION #119

SUMMARY

119. A public official or local official is not required to file a potential conflict of interest notice in a case involving official action of general application to the official's business or profession simply because of association in that business or profession. However, if an official or the official's associated business has a financial interest which would be directly and uniquely affected by an official action, then the official must file a potential conflict of interest notice as required by Minn. Stat. § 10A.07, subd. 1 (1990).

FACTS

You request that the Board give guidance to you regarding whether a position you have recently taken with United HealthCare Corporation ("United") will affect certain of your legislative activities in the Minnesota Senate.

You state that in September, 1991, you were designated by United to be "of counsel" to the company and that you report to United's general counsel within the company's legal department. You state that your primary job responsibilities are general legal work related to United's business, policy development and public affairs. You further state that you are not expected to make contact with any public official or public body in Minnesota as a representative of United. You state that you have been retained as an independent contractor and that you will not be an officer, director or employee of the company. You inform the Board that your compensation is fixed and does not include profit sharing or stock options and that neither you nor your spouse now owns or will own any of United's stock.

You state that as part of your retainer arrangement with United, you and the company agreed to a Statement of Ethical Guidelines which you enclosed with your request to the Board. You state that the guidelines address your position with United as it may affect your responsibilities and activities as a State Senator.

You state that the Minnesota Legislature is a citizen's legislature in which Minnesotans of a variety of walks of life make a commitment to public service. You state that the legislature is structured as a part-time endeavor to insure that the legislature is composed of persons whose career experiences will continually benefit the legislative process. You further state that by its very nature a legislature composed of persons with other career pursuits enhances the likelihood that potential conflicts of interest will arise. You state that teachers are asked to pass judgment on education bills, farmers scrutinize agricultural bills, lawyers consider tort reform initiatives and private business owners pass judgment on unemployment and workers compensation measures.

You state that you have reviewed the rules on conflicts of interest that exist in the state's ethical practices laws. In your view those rules appear to be somewhat ambiguous. You ask the Board to answer the following questions:

QUESTION ONE

Does your relationship with United create a conflict of interest that would require that you abstain generally from voting on health care issues that come before the legislature?

OPINION

No. There is no automatic conflict of interest under Minn. Stat. § 10A.07 when a legislator is required to take an action or make a decision involving legislation of general application to the legislator's business or profession. Rather, the legislator must examine each matter on a case by case basis by reviewing the specific action or decision to be taken and determining its effect on the legislator's financial interests or those of an associated business.

To determine whether there is a potential conflict of interest requiring disclosure under Minn. Stat. § 10A.07 (1990), the Board suggests the following analysis:

A). Will the action or decision substantially affect the legislator's financial interests or the financial interests of the legislator's associated business?

If the answer is no, then no conflict exists under Minn. Stat. § 10A.07. If the answer is yes, consider question B.

B). Is the effect on the legislator greater then on other members of the legislator's business classification, profession, or occupation?

If the answer is no, then no conflict exists. If the answer is yes, then the legislator must follow the disclosure provisions of Minn. Stat. § 10A.07 (1990).

A legislator is not required to file a potential conflict of interest notice in a case involving legislation of general application to the legislator's business or profession. For example, a lawyer should ordinarily not be required to file a conflict of interest notice in a case of probate reform law where other lawyers would be similarly affected in essentially the same manner as the legislator. A legislator who owns a small business should not be required to abstain from voting on an omnibus tax bill simply because the legislator's business is subject to taxation. Similarly a legislator who is a high school teacher should not be required to abstain from voting on an omnibus education funding bill simply because the bill appropriates funds for secondary education. In these instances, the profession, occupation, or associated business of the legislator has been disclosed in the required Statement of Economic Interest under Section 10A.09, thereby providing public disclosure of the general interests.

QUESTION TWO

Does your relationship with United create a conflict of interest that would require that you abstain from voting specifically on the Health Care Access Bill, H.F. 2, as passed by the Legislature in 1991?

OPINION

No. To reach this conclusion the Board reviewed a description of the major features and a summary of the Health Care Access Bill, H.F. 2, as passed by the Legislature in 1991, together with comments by Lois Quam, chair of the Minnesota Health Care Access Commission; analysis by Senator Mondale of the financial effect on United HealthCare as opposed to other similarly-situated businesses in Minnesota; and

comments by Tom Ehrlichmann, legislative assistant, Health Care Access Division of the Minnesota Senate. The Board applied the analysis discussed under Question One, above.

Senator Mondale is an independent contractor who is "of counsel" to United. Senator Mondale states that his relationship with United is his major source of income outside of the Legislature and that he considers United to be an "associated business" of his, requiring disclosure under Section 10A.09.

Based on the information provided to the Board, it is the Board's opinion that Senator Mondale's action or decision regarding H.F. 2 would not substantially affect his financial interests. The Board found that Senator Mondale's action or decision regarding H.F. 2 either would not substantially affect the financial interests of United or would not have any greater effect upon Senator Mondale than on others of his business classification, because it appears that United is not the only company providing management or administrative services to health care carriers in Minnesota. The Health Care Access Bill, H.F. 2, as passed by the Legislature in 1991, appears to have a broad effect on all health care carriers.

Although the Board is issuing this advisory opinion pursuant to its authority under Minn. Stat. § 10A.02, subd. 12, the ultimate determination of the existence of a potential conflict of interest requiring disclosure rests with the legislator or other public official or local official charged with making the decision.

Issued to:
John A. Cairns, Esq.
Briggs and Morgan Law Offices
2400 IDS Center
Minneapolis, MN 55402

Approved:

February 4, 1992

RE: Annual Report of Lobbyist Principal

ADVISORY OPINION #120

SUMMARY

120. A member of a trade association is not required to report as a lobbying disbursement the dues paid to a trade association that engages or compensates a registered lobbyist. However, a trade association that spends more than $500 to engage or compensate a registered lobbyist must report as a principal. Records and data of lobbyists and principals submitted to the Board for audit are protected during the audit by the Government Data Practices Act. Materials retained by the Board after the audit is completed are public.

FACTS

You state that your client is a nonprofit trade association whose members support actions to influence state public policy. You further state that lobbying reports on the members' behalf are routinely filed identifying expenses as required by Minnesota law. You state that you are requesting advice from the Board regarding the report required under Minn. Stat. § 10A.04, subd. 6, requiring principals, as defined, to make certain reports by March 15 for the preceding calendar year.

You ask the Board to respond to the following questions:

QUESTION ONE

Must a trade association supported by dues paid by Minnesota corporations report as a principal if the trade association's lobbying activities involve expenditures of more than $501?

OPINION

Yes. The trade association must report as a principal if the trade association's disbursements for lobbying purposes include payment of more than $500 in aggregate in any calendar year to engage a lobbyist, compensate a lobbyist, or authorize the expenditure of money by a lobbyist. Minn. Stat. §§ 10A.01, subd. 28, and 10A.04, subd. 6 (1990).

QUESTION TWO

If the answer to Question One is "yes", must the trade association's dues paying members then include the percentage of dues allocable to the trade association's lobbying activities in the calculation of expenses in determining the correct reporting category on the principal's report?

QUESTION TWO A

If the answer to Question Two is "yes", does this not constitute "double reporting"? You state that it appears to you to be inappropriate that both the trade association and the member each include the same amount of money in their own principal's reports.

OPINION

No. In response to Questions Two and Two A, the Board notes that membership dues are not reportable as a lobbying disbursement by an individual or an association even through the association to whom the dues are paid engages or compensates a lobbyist. Therefore, the answer to Question Two is no. Minn. Stat. § 10A.01, subd. 11 (a) (1990).

A lobbyist who registers with the Board to represent a trade association must report the disbursements for lobbying purposes made by the trade association, by the lobbyist, and by any employee of the lobbyist on behalf of the trade association. If the trade association receives contributions of more than $500 in a calendar year specifically to be used for lobbying purposes, the trade association's lobbyist must report each original source of the funds as required by Minn. Stat. § 10A.04, subd. 4 (d) and Minn. Rules pt. 4510.0700.

QUESTION THREE

Where certain activities of a principal are a mix of reportable and nonreportable expenditures is it permissible for the principal to include as a portion of its reported amounts reported only the allocable share related to defined reportable expenditures?

OPINION

Yes, the principal need report only its allocable share of the statutorily identified reportable expenditures.

QUESTION FOUR

In the event an audit is conducted by the Ethical Practices Board of a principal's account would the data collected be protected under the Government Data Practices Act as either "not public data" (Minn. Stat. § 13.02, subd. 8a) or "nonpublic data" (Minn. Stat. § 13.02, subd. 9)?

OPINION

The Board is subject to the Government Data Practices Act, Minn. Stat. ch. 13 (Supp. 1991). Pursuant to Minn. Stat. § 13.794 (1990), data, notes, and preliminary drafts or reports created, collected, and maintained by the Board, including records and data submitted by lobbyists and principals, during an audit authorized by Minn. Stat. § 10A.04, subd. 7, are confidential or protected nonpublic until the final report has been issued.

When the audit is complete, data and records received from the subject of the audit that are not part of the final report will be returned to the subject of the audit. As the Board is not aware of any provision classifying the data as not public after the audit is complete, data, records, and notes retained by the Board after the audit is completed are public data.

The Board has recommended to the Legislature to provide a records retention requirement in the lobbyist and principal disclosure program to assist the individuals and associations subject to the audit provisions of Ethics in Government Act.

QUESTION FIVE

If a corporation does not expend either funds or staff time sufficient to reach the reporting threshold levels under Minn. Stat. § 10A.01, subd. 11 (a) must the corporation file a principal's report?

OPINION

No. However, the Board notes that a corporation that does not reach the threshold in Minn. Stat. § 10A.01, subd. 11 (a) still must report as a principal if the corporation spends more than $50,000 in any calendar year on efforts to influence legislative action, administrative action, or the official action of metropolitan governmental units. Minn. Stat. § 10A.01, subd. 28 (2) (1990).

Issued to:
The Honorable Rich O'Connor
State Representative
593 State Office Building
St. Paul, MN 55155

Approved:

February 28, 1992

RE: Campaign Finance: Constituent Services

ADVISORY OPINION #121

SUMMARY

121. An incumbent legislator represents the constituency entitled to elect the legislator at the most recent election for the office held. The costs incurred by a legislator's principal campaign committee to provide services to persons who live outside the legislator's present district and within the boundaries of the new district in which the legislator plans to seek election in 1992 must be reported as "campaign expenditures." Minn. Stat. §§ 10A.01, subd. 10c; 10A.25 (1990 & Supp. 1991).

FACTS

You are a state representative elected in 1990 to represent District 66B. You state that you have been informed by Board staff that any and all expenditures that you incur to provide services to constituents in your new legislative district under Minnesota Laws, Chapter 246, (1991) are considered campaign expenditures and charged to your campaign because you are providing services to persons who are not your constituents.

You state that you have incurred expenditures to print and distribute in your present district and in the new district flyers containing information about your office in the legislature and a summary of legislation which you are carrying or supporting in the 1992 session for the purpose of identifying yourself to the constituency that would be entitled to elect you to a legislative position. You state that you have paid for the printing and insertion of a paid advertisement in you local newspapers to invite constituents to submit proposals which could possibly be carried as legislation in the 1992 session. You further state that in none of these pieces have you asked for a political contribution or a constituent's vote.

You submit that expenditures such as printing and placing advertisements and flyers, printing and distribution of legislative reports, and other mailings made during the legislative session (and up to 60 days afterward) are all constituent expenditures. In support of your position, you point out that Webster's Dictionary defines the word "constituent" as follows:

> CONSTITUENT: One who authorizes another to act for him; <u>one of a group who elects another to represent him in public office</u>; a resident of a constituency. (emphasis added)

Additionally you point out that the word "constituency" is defined as:

> A body of citizens <u>entitled to</u> elect a representative, as to a legislative or executive position; the residents in an electoral district. (emphasis added)

You state that, notwithstanding any changes by the courts, it is your understanding that both you and your anticipated opponent in the 1992 elections are incumbent representatives of the reapportioned legislative district. You observe that in your opinion your anticipated opponent enjoys an unfair advantage because he can incur

that both you and your anticipated opponent in the 1992 elections are incumbent representatives of the reapportioned legislative district. You observe that in your opinion your anticipated opponent enjoys an unfair advantage because he can incur the same costs as you incur and claim them as constituent expenses, whereas you are required to charge the same expenses for the same constituency as a campaign expense.

You ask the Board to answer the following question:

> Do expenditures to provide certain information to residents of your new district as a function of your legislative office fall more appropriately into the category of campaign expenditures or of constituent services?

OPINION

An incumbent legislator represents the constituency entitled to elect the legislator to the office held. The most recent state election for legislators occurred in 1990 in districts as apportioned in 1982. The district that an incumbent legislator is currently representing is the district to which the legislator was elected in 1990. An incumbent does not represent the new district until January, 1993. Therefore, a legislator's constituent is someone whom the legislator presently represents in the district for which the legislator was elected.

The costs incurred by a legislator's principal campaign committee to provide services to persons who live outside the legislator's present district and within the boundaries of the new district in which the legislator plans to seek election in 1992 must be reported as "campaign expenditures" and must be subject to the nonelection year expenditure limit applicable until filing opens for legislative offices in 1992. If the legislator files an affidavit of candidacy in 1992 and signs and timely files a Public Subsidy Agreement to limit spending, all campaign expenditures incurred in 1992 are subject to the applicable 1992 election year spending limit. Minn. Stat. §§ 10A.01, subd. 10; 10A.25 (1990 & Supp. 1991).

The costs incurred by a legislator's principal campaign committee to provide constituent services to persons who live in the legislator's present district should be reported as "noncampaign disbursements." These include services for a constituent by the legislator performed from the beginning of the term of office to sixty days after adjournment sine die of the legislature in the election year for the office held. Minn. Stat. § 10A.01, subd. 10c; Minn. Rules pt. 4500.3100.

ALTERNATE DISPOSITION OF ADVISORY OPINION REQUESTS

Advisory Opinion Request #122 dated March 17, 1992, from Jeffrey W. Hamiel, Executive Director, Metropolitan Airports Commission, Minneapolis-Saint Paul International Airport, 6040 - 28th Avenue South, Minneapolis, MN 55450
RE: Lobbyist Principal - On July 27, 1992, the Board notified Mr. Hamiel that the Board was unable to approve an advisory opinion by the required four votes on the issue of whether political subdivisions are lobbyist principals for the purposes of Minn. Stat. § 10A.04, subd. 6 (1990), and, therefore, it is up to each individual political subdivision to decide whether to complete and file the annual report of lobbyist principal.

Advisory Opinion Request #123 dated March 23, 1992, from Kathleen M. Lamb, Esq., McGrann Shea Franzen Carnival Straughn & Lamb, Chartered, 1700 Lincoln Centre, 333 South 7th Street, Minneapolis, MN 55402-2436, on behalf of the Metropolitan Sports Facilities Commission
RE: Lobbyist Principal - On July 27, 1992, the Board notified Ms. Lamb that the Board was unable to approve an advisory opinion by the required four votes on the issue of whether political subdivisions are lobbyist principals for the purposes of Minn. Stat. § 10A.04, subd. 6 (1990), and, therefore, it is up to each individual political subdivision to decide whether to complete and file the annual report of lobbyist principal.

Issued to:
The Honorable Rich O'Connor
State Representative
593 State Office Building
St. Paul, MN 55155

Approved:

May 27, 1992

RE: Campaign Finance: Fundraising during Legislative Session

ADVISORY OPINION #124

SUMMARY

124. An invitation to an individual to attend a function for which a specified charge is made is a solicitation within the meaning of Minn. Stat. § 10A.065 regardless of whether the ticket is marked complimentary.

FACTS

You are a state representative elected in 1990 to represent District 66B. You state that you are seeking an opinion from the Board as to whether certain activities relating to fundraisers held by your campaign comply with both the letter and the spirit of Minn. Stat. § 10A.065, subd. 1 (1990.) You further state that you understand that under state law it is illegal for a candidate to solicit or accept contributions from a registered lobbyist, political committee, or political fund during the legislative session.

You state that your campaign has held fundraisers during the legislative session; that you have accepted contributions from individuals only; and that you have made it a point not to accept any contributions from registered lobbyists at these functions.

You further state that you have several friends in your district who are registered lobbyists and that you would like to invite them to attend your fundraisers because they are your friends and supporters. You submit that because of their relationship as registered lobbyists you neither solicit nor accept contributions from them in return for their invitations. You point out that some of your friends feel that they cannot come to your fundraisers because of their relationship as registered lobbyists and you would like an opinion from the Board to clear up any confusion. You further state that you want to make sure that your campaign is violating neither the letter nor the spirit of the law and that you intend to fully comply with current statutes.

You ask the Board to answer the following question:

> Are you violating the intent of the law if you distribute complimentary invitations to fundraisers during the legislative session to registered lobbyists?

PERTINENT STATUTE

A candidate for the legislature or for constitutional office, a candidate's principal campaign committee...shall not solicit or accept a contribution on behalf of the candidate's principal campaign committee...from a registered lobbyist, political committee, or political fund during a regular session of the legislature. Minn. Stat. § 10A.065, subd. 1 (1990 and Supp. 1991)

OPINION

Yes. Inviting lobbyists to fundraisers during the legislative session even if "complimentary" runs contrary to the intent of the law. One of the intents of Section 10A.065 is to discourage legislators from requesting lobbyists to make contributions to legislators while the lobbyists' issues or concerns are before the legislature.

The act of inviting an individual to attend a fundraiser for which a specified charge is made is a solicitation of that individual to pay the asking price to attend the event. The fact that the ticket offered to the individual is marked "complimentary" does not alter this fact. The recipient of the invitation may elect to pay the full price of the ticket, to pay a partial price of the ticket, to accept the complimentary ticket as a donation from the solicitor to the recipient, or to disregard the invitation.

Regardless of the recipient's choice, a solicitation has been made. Minn. Stat. § 10A.065 (1990 and Supp. 1991) prohibits the solicitation of a contribution on behalf of a candidate for the legislature or a constitutional office, a candidate's principal campaign committee, or any committee with the candidate's name or title or any committee authorized by the candidate from a registered lobbyist, political committee, or political fund during a regular session of the legislature. A solicitation is prohibited under this law even if no contribution is actually accepted.