

**ETHICAL PRACTICES BOARD**

**First Floor South, Centennial Building . 658 Cedar Street . St. Paul, MN 55155-1603**

The following publication does not identify the requester of the advisory opinion, which is nonpublic data under Minn. Stat. § 10A.02, subd. 12(b)

**RE: Campaign Expenditures and noncampaign disbursements**

**ADVISORY OPINION # 248**

**SUMMARY**

Costs associated with educating candidates and legislators on issues of interest to a public official are not included in the noncampaign disbursements defined in Minn. Stat. § 10A.01, subd. 10c. However, appropriate use of campaign funds is governed primarily by Minn. Stat., chapter 211B, which is not within the Board's jurisdiction. Constituent services are defined in Minn. Rules, part 4503.0100, subp. 6, and must actually provide a service to the constituent. Certain contributions from entities not registered with the Board may be accepted by principal campaign committees if statutory requirements are met.

**FACTS**

As a legislator, you request an advisory opinion from the Ethical Practices Board based on the following facts:

1. You are particularly interested in a number of legislative issues that you believe are important to the whole state.
2. You are considering contacting other legislators or candidates in the current election to educate them about these issues. You believe that your efforts may have the following effects, some of which you recognize may be indirect:
  - A. candidates you talk to may have a better chance of getting elected because they are better educated on the issues;

- B. legislators (including newly elected legislators) who you have contacted may be more willing to support your position on these issues in the legislature;
  - C. your own chances of re-election in your next general election may be enhanced if you are successful in your efforts.
3. Your efforts to inform legislators or candidates would be performed by yourself or by others as volunteers. Some costs would be incurred in conducting these activities.
  4. You also are considering the design of various written materials your committee might produce and you ask direction from the Board about defining constituent services.
  5. You also wish to know what contributions you may accept from entities not registered with the Board.

#### **ISSUE ONE**

Can contributions received by your principal campaign committee be used to educate and inform other legislators and candidates about legislative issues in which you are interested?

#### **OPINION**

Use of campaign funds is governed primarily by Minnesota Statutes, chapter 211B, the Fair Campaign Practices Act, which is not under the Board's jurisdiction. To determine whether the proposed use is permitted under chapter 211B, you will need to consult your own legal advisors.

Chapter 211B does permit use of campaign funds for those items defined as noncampaign disbursements in Minn. Stat. § 10A.01, subd. 10c, a statute which is within the Board's jurisdiction.

The Board has reviewed the noncampaign disbursement categories, and concludes that no category includes the activities you describe without expanding its definition significantly. Thus, the activities you describe are not permitted as noncampaign disbursements.

## ISSUE TWO

How can you determine if the provision of written material is a constituent service?

### OPINION

Minnesota Rules, part 4503.0100, subp. 6, defines constituent services as follows:

"Services for a constituent" means services performed or provided by an incumbent legislator or constitutional officer for the benefit of one or more residents of the official's district. "Services for a constituent" do not include gifts, congratulatory advertisements, charitable contributions, or similar expenditures.

In order to be a constituent service the item must, in fact, serve the constituent in some way. Acts which are primarily designed to enhance the giver's reputation (and presumably the chances for re-election) are not services to constituents.

What a written piece actually says will often determine whether it provides a service to the constituent or is for the purpose of influencing the nomination or election of the candidate. If the primary purpose of the piece is to influence the nomination or election of a candidate, it does not provide a constituent service. In some cases it may not be readily apparent whether a piece constitutes a valid constituent service or not. To give an opinion in more specific terms, the Board would need to examine specific examples of proposed materials.

## ISSUE THREE

May your principal campaign committee accept contributions from non-corporate entities which are not registered with the Board?

### OPINION

Yes, under certain circumstances your principal campaign committee may accept contributions from non-corporate entities which are not registered with the Board.

Contributions from a sole proprietorship may be accepted and are considered contributions from the owner of the proprietorship. Such contributions are subject to all of the statutory provisions applicable to contributions from the individual owner. Contributions made in the name of the proprietorship are aggregated with those made in the name of the owner for the purpose determining the amount of the owner's total contributions.

Contributions from associations, as defined in Minn. Stat. § 10A.01, subd. 3, which are not corporations, and which are not registered with the Board may be accepted up to \$100.

Your principal campaign committee may not accept a contribution of more than \$100 from an unregistered association unless the association provides, at the time of the contribution, a

statement in lieu of registration as provided by Minn. Stat. § 10A.22, subd. 7. The statement provides financial disclosure in essentially the same manner as is provided by registered political committees and political funds. If the unregistered association provides this statement, its contribution limit is the same as that of a registered political committee or political fund.

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Carolyn D. Rodriguez, Chair  
Ethical Practices Board

### CITED STATUTES

#### 10A.01 DEFINITIONS.

Subd. 3. "Association" means business, corporation, firm, partnership, committee, labor organization, club, or any other group of two or more persons, which includes more than an immediate family, acting in concert.

Subd. 10c. **Noncampaign disbursement.** "Noncampaign disbursement" means a purchase or payment of money or anything of value made, or an advance of credit incurred, by a political committee, political fund, or principal campaign committee for any of the following purposes:

- (a) payment for accounting and legal services;
- (b) return of a contribution to the source;
- (c) repayment of a loan made to the political committee, political fund, or principal campaign committee by that committee or fund;
- (d) return of a public subsidy;
- (e) payment for food, beverages, entertainment, and facility rental for a fundraising event;
- (f) services for a constituent by a member of the legislature or a constitutional officer in the executive branch, performed from the beginning of the term of office to adjournment sine die of the legislature in the election year for the office held, and half the cost of services for a constituent by a member of the legislature or a constitutional officer in the executive branch performed from adjournment sine die to 60 days after adjournment sine die;
- (g) a donation in kind given to the political committee, political fund, or principal campaign committee for purposes listed in clauses (e) and (f);
- (h) payment for food and beverages provided to campaign volunteers while they are engaged in campaign activities;
- (i) payment of expenses incurred by elected or appointed leaders of a legislative caucus in carrying out their leadership responsibilities;

- (j) payment by a principal campaign committee of the candidate's expenses for serving in public office, other than for personal uses;
- (k) costs of child care for the candidate's children when campaigning;
- (l) fees paid to attend a campaign school;
- (m) costs of a postelection party during the election year when a candidate's name will no longer appear on a ballot or the general election is concluded, whichever occurs first;
- (n) interest on loans paid by a principal campaign committee on outstanding loans;
- (o) filing fees;
- (p) post-general election thank-you notes or advertisements in the news media;
- (q) the cost of campaign material purchased to replace defective campaign material, if the defective material is destroyed without being used;
- (r) transfers to a party unit as defined in section 10A.275, subdivision 3; and
- (s) other purchases or payments specified in board rules or advisory opinions as being for any purpose other than to influence the nomination or election of a candidate or to promote or defeat a ballot question.

The board shall determine whether an activity involves a noncampaign disbursement within the meaning of this subdivision.

#### **10A.22 REPORTS AND STATEMENTS.**

##### **Subd. 7. Statement required; penalty.**

(a) The treasurer of a political committee or political fund shall not accept a contribution of more than \$100 from an association not registered in this state unless the contribution is accompanied by a written statement which meets the disclosure and reporting period requirements imposed by section 10A.20. This statement shall be certified as true and correct by an officer of the contributing association. The political committee or political fund which accepts the contribution shall include a copy of the statement with the report which discloses the contribution to the board. The provisions of this subdivision shall not apply when a national political party transfers money to its affiliate in this state.

(b) An unregistered association may provide the written statement required by this subdivision to no more than three political committees or political funds in any calendar year. Each statement must cover at least the 30 days immediately preceding and including the date on which the contribution was made. An unregistered association or an officer of it is subject to a civil penalty up to \$1,000 if the association or its officer:

- (1) fails to provide a written statement as required by this subdivision; or
- (2) fails to register after giving the written statement required by this subdivision to more than three political committees or political funds in any calendar year.

An officer of an association who violates this paragraph is guilty of a misdemeanor.