

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

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

RE: In-Kind Contribution of a Local Access Cable TV Program

ADVISORY OPINION 365

SUMMARY

A political party unit that contributes time on a local cable TV program to a candidate is making an in-kind contribution to the candidate that counts against the party limit of the candidate. The in-kind contribution is categorized as either a campaign expenditure or a noncampaign disbursement by the candidate depending on the status of the candidate, the date(s) on which the program is broadcast, and other factors.

FACTS

As an officer with a political party unit registered with the Campaign Finance and Public Disclosure Board (the Board), you ask for an advisory opinion. The facts of the advisory opinion are based on the letter requesting the advisory opinion and conversations with Board staff.

1. Your party unit is considering the production of a local cable TV program for political purposes.
2. The political party unit will pay for the cost of producing the program. There may be an opportunity to staff the studio with volunteers from the political party unit who would not be paid for their work.
3. You anticipate interviewing candidates for state level office on the program. The candidates will be interviewed for perspectives on current issues and matters occurring in the legislature.
4. Candidates interviewed on the program may or may not represent a district, or seeking an office, that is within the viewing audience of the local cable network that will carry the program.

5. The programs will be taped. The programs may be broadcast on more than one occasion.

ISSUE ONE

Is the political party unit making an in-kind donation to a candidate if the candidate is interviewed on the local cable TV program for their perspectives on current issues and legislative events?

OPINION ONE

Yes. As provided in the facts of this request, the party unit acknowledges a political purpose in paying for the production of the cable TV program. The Board assumes that the political purpose of any party unit is to elect and assist candidates of the party. The cable TV program has value to the candidates in the exposure it provides to the public of the candidate's name, political beliefs, and views on issues that are important to the candidate and presumably the viewing audience. Therefore, an appearance on the cable TV program meets the definition of Minn. Stat. §10A.01, subd.13, which provides that a "Donation in kind" is a donation of anything of value other than money or negotiable instruments.

ISSUE TWO

If a candidate hosts the program or a segment of the program, is the political party unit still making an in-kind contribution to the candidate?

OPINION TWO

Yes. The role of host on the program would have at least as much value to the candidate as a guest appearance in that the same benefits of name recognition and distribution of the candidate's positions on the issues will occur.

ISSUE THREE

What factors should be considered in determining the value of the in-kind donation to the candidates that appear on the program?

OPINION THREE

All in-kind donations must be assessed a fair market value (Minn. Stat. §10A.20, subd. 3). The fair market value is the cost the candidate's committee would have to pay if it was purchasing the item on the open market. Given the specifics of this request, the political party unit may need to consider the cost a candidate would have to pay for studio time and production crew costs. The Board understands that there may be an opportunity to staff the studio with political party unit volunteers who will not be paid for their work. If that occurs the volunteer's time is not an expenditure that should be included in determining the fair market value of the in-kind donation (Minn. Stat. §10A.01, subd. 9). If more than one candidate appears on a program, the fair market value would be a reasonable share of production and studio costs relative to the amount of screen time provided to each candidate (Minn. Rules 4503.0800, Subp. 2).

Candidates appearing on the program must count the in-kind donation against their limit for contributions from political party units (Minn. Stat. §10A.27, subd. 2). The candidate's committee must report the in-kind donation as an in-kind donation to the committee and as either an in-kind campaign expenditure or an in-kind noncampaign disbursement during the same reporting period in which the donation is received (Minn. Stat. §10A.20, subd. 3 (b), (g), and (l)).

The candidate receiving the in-kind donation of appearing on the program will report the donation as a campaign expenditure if the purpose of the candidate's appearance on the program was to influence the nomination or election of the candidate. If the purpose of the candidate appearing on the program was to provide constituents with information on issues facing the state, the candidate may determine that the in-kind donation was used as a noncampaign disbursement for constituent services (Minn. Stat. §10A.01, subd. 26 (6)). To categorize the value of appearing on the cable TV program as a constituent services the candidate must be an incumbent office holder whose district is at least a subpart of the potential viewing audience. Categorizing a noncampaign disbursement as a constituent service is only available if the appearance on the program is broadcast from the beginning of the term of office to the adjournment sine die of the legislature in the election year for the office held. An appearance on the program that occurs during the 60 days following the adjournment of the legislature sine die may be reported as 50% constituent service and 50% campaign expenditure. An appearance on the program, or the rebroadcast of an appearance on the program, that occurs after 60 days following the adjournment of the legislature sine die is counted as entirely as a campaign expenditure.

ISSUE FOUR

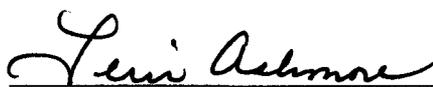
If a particular program or segment of a program is played on the cable network multiple times is each screening a separate in-kind donation to a candidate who appears in the program or segment?

OPINION FOUR

Yes. The value to the candidate described in opinion one occurs every time the candidate's appearance on the program is broadcast. Multiple broadcasts of a program, or a segment of the program, containing the candidate represents multiple in-kind donations that will count against the candidate's party unit contribution limit and may count against the candidate's campaign expenditure limit. This type of in-kind donation is an approved expenditure that is made with the candidate's consent (Minn. Stat. §10A.01, subd. 4). If the value of the in-kind donation is over \$20 the treasure of the candidate's committee must provide written authorization to your political party unit stating the amount (value) of the in-kind contributions that your political party unit may provide to the candidate (Minn. Stat. §10A.17, subd. 2). This may mean a statement of the number of times the program or segment on which the candidate appeared may be played. The written authorization is a safe guard to avoid excess party unit contributions and/or excess campaign expenditures that could occur if the program or segment in question is broadcast numerous times.

If a candidate receives a tape of his or her appearance on the program the value of the tape should be included in the fair market value of the in-kind donation. If the candidate pays for the showing of the tape on another cable TV network, the candidate will be making an additional campaign expenditure or noncampaign disbursement unrelated to the in-kind donation made by the political party unit when the candidate appeared on the original cable TV program.

Issued February 22, 2005



Terri Ashmore, Chair
Campaign Finance and Public Disclosure Board

Cited Statutes and Administrative Rules

10A.01 Definitions.

Subd. 4. **Approved expenditure.** "Approved expenditure" means an expenditure made on behalf of a candidate by an entity other than the principal campaign committee of the candidate, if the expenditure is made with the authorization or expressed or implied consent of, or in cooperation or in concert with, or at the request or suggestion of the candidate, the candidate's principal campaign committee, or the candidate's agent. An approved expenditure is a contribution to that candidate.

Subd. 9. **Campaign expenditure.**

"Expenditure" does not include:

- (1) noncampaign disbursements as defined in subdivision 26;
- (2) services provided without compensation by an individual volunteering personal time on behalf of a candidate, ballot question, political committee, political fund, principal campaign committee, or party unit; or
- (3) the publishing or broadcasting of news items or editorial comments by the news media.

Subd. 13. **Donation in kind.** "Donation in kind" means anything of value that is given, other than money or negotiable instruments. An approved expenditure is a donation in kind.

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

- (1) payment for accounting and legal services;
- (2) return of a contribution to the source;
- (3) repayment of a loan made to the principal campaign committee by that committee;
- (4) return of a public subsidy;
- (5) payment for food, beverages, entertainment, and facility rental for a fund-raising event;
- (6) 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;

- (7) payment for food and beverages provided to campaign volunteers while they are engaged in campaign activities;
- (8) payment of expenses incurred by elected or appointed leaders of a legislative caucus in carrying out their leadership responsibilities;
- (9) payment by a principal campaign committee of the candidate's expenses for serving in public office, other than for personal uses;
- (10) costs of child care for the candidate's children when campaigning;
- (11) fees paid to attend a campaign school;
- (12) 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;
- (13) interest on loans paid by a principal campaign committee on outstanding loans;
- (14) filing fees;
- (15) post-general election thank-you notes or advertisements in the news media;
- (16) the cost of campaign material purchased to replace defective campaign material, if the defective material is destroyed without being used;
- (17) contributions to a party unit; and
- (18) 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.

10A.20 Campaign reports.

Subd. 3. **Contents of report.** (a) The report must disclose the amount of liquid assets on hand at the beginning of the reporting period.

(b) The report must disclose the name, address, and employer, or occupation if self-employed, of each individual or association that has made one or more contributions to the reporting entity, including the purchase of tickets for a fund-raising effort, that in aggregate within the year exceed \$100 for legislative or statewide candidates or ballot

questions, together with the amount and date of each contribution, and the aggregate amount of contributions within the year from each source so disclosed. A donation in kind must be disclosed at its fair market value. An approved expenditure must be listed as a donation in kind. A donation in kind is considered consumed in the reporting period in which it is received. The names of contributors must be listed in alphabetical order. Contributions from the same contributor must be listed under the same name. When a contribution received from a contributor in a reporting period is added to previously reported unitemized contributions from the same contributor and the aggregate exceeds the disclosure threshold of this paragraph, the name, address, and employer, or occupation if self-employed, of the contributor must then be listed on the report.

(g) The report must disclose the name and address of each individual or association to whom aggregate expenditures, including approved expenditures, have been made by or on behalf of the reporting entity within the year in excess of \$100, together with the amount, date, and purpose of each expenditure and the name and address of, and office sought by, each candidate on whose behalf the expenditure was made, identification of the ballot question that the expenditure was intended to promote or defeat, and in the case of independent expenditures made in opposition to a candidate, the candidate's name, address, and office sought. A reporting entity making an expenditure on behalf of more than one candidate for state or legislative office must allocate the expenditure among the candidates on a reasonable cost basis and report the allocation for each candidate.

(l) The report must disclose the name and address of each individual or association to whom noncampaign disbursements have been made that aggregate in excess of \$100 within the year by or on behalf of the reporting entity and the amount, date, and purpose of each noncampaign disbursement.

10A.17 Expenditures.

Subd. 2. **Written authorization.** An individual or association may not make an approved expenditure of more than \$20 without receiving written authorization from the treasurer of the principal campaign committee of the candidate who approved the expenditure stating the amount that may be spent and the purpose of the expenditure.

4503.0800 DONATIONS IN KIND AND APPROVED EXPENDITURES.

Subp. 2. **Multicandidate materials.** An approved expenditure made on behalf of multiple candidates must be allocated between the candidates on a reasonable basis if the cost exceeds \$20 per candidate.