State of Minnesota

Campaign Finance & Public Disclosure Board

Suite 190, Centennial Building. 658 Cedar Street. St. Paul, MN55155-1603

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RE: Disclosure related to ballot question committees

To: John Helmberger, CEO
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ADVISORY OPINION 421

SUMMARY

Minnesota Statutes, Chapter 10A, provides for disclosure by associations that register political funds with the Board. This opinion describes the statutory requirements under various scenarios presented by the requester.

FACTS

As the representative of the Minnesota Family Council ("MFC"), you ask for an advisory opinion based on the following facts:

1. Minnesota Family Council is a tax exempt, not for profit corporation, recognized by the IRS as a 501(c)(4) social welfare, grassroots lobbying and policy organization. MFC is actively engaged in supporting the Minnesota Marriage Amendment to be voted on in next year's General Election.

2. MFC has registered a political fund, the Minnesota Family Council Marriage Protection Fund, ("MFC Political Fund") for purposes of financially supporting the Marriage Amendment.

Based on the above statement of facts, you ask several questions about the disclosure required by Chapter 10A of Minnesota statutes as it applies to Minnesota Family Council. The questions are restated below as issues. In some cases ambiguous language has been modified to more precisely state the question.

Introductory Statement

The issues raised in this request relate in part to the concept of a political fund and the association that supports it. It is important to understand that a political fund, as defined in Minnesota Statutes section 10A.01, subd. 28, is simply an accumulation of money collected or expended for statutorily specified purposes. In the case of the requester, its political fund consists of the money collected or expended to promote or defeat a ballot question.

An association's political fund is not an entity separate from the association. Rather, it is an accumulation of money that is tracked and reported on using an accounting mechanism of the association's choosing. Thus references to a "transfer" or an "allocation" of money by an association to its political fund mean nothing more than the recording of an accounting record of the fact that an association's general treasury money has been used for purposes which, by statutory definition, make it a part of the association's political fund.

Throughout this opinion, the terms "general treasury money" or "general treasury funds" mean money that the association collects from dues, membership fees, or donations for its general purposes. These terms exclude "contributions" as that term is defined in Chapter 10A, which, in the present context, is money received by an association for the specific purpose of promoting or defeating a ballot question.

Issue One

How does the Board's recent guidance apply as a practical matter when MFC transfers funds from its general treasury to the MFC Political Fund? Is the record of the 'allocation' of donors of less than $1,000 maintained solely by MFC or is it to be provided or reported to the Board? If it is not reported to the Board at the time of the transfer, if a complaint is filed against MFC and/or the MFC Political fund, will the Board seek to obtain the allocation ledger? If the ledger must be provided to the Board, isn't that subject to being obtained by the public as a public record and, if so, how does that protect against disclosure of underlying source(s) of MFC general treasury donors of less than $1,000?

Opinion

In 2010, the legislature recognized independent expenditure political committees or funds as vehicles for making independent expenditures and other expenditures that do not constitute contributions to candidates or party units. In its recent guidance, the Board recognized that this new legislation was broad enough to also apply to an association that made only ballot question expenditures. This recognition allows ballot question political committees or funds the option of reporting under the new independent expenditure political committee or fund disclosure statutes rather than under the disclosure statutes that existed prior to 2010.

Prior to 2010, Minnesota Statutes section 10A.12, subd. 5, allowed an association to account for general treasury funds through a political fund account that it established and reported through. Under that section, the association was required to report to the Board with its political fund report the name of any individual whose donations to the association constituted more than $100 in aggregate of the money that the association accounted for through its political fund.

Under the independent expenditure political fund disclosure requirements, no underlying source disclosure is required until the association has allocated $5,000 or more in a year to its political fund account. Once allocations of $5,000 or more have been made by an association, underlying source disclosure is required, which may or may not result in the disclosure of itemized sources.

Section 10A.27, subd. 15, under which ballot question political funds may operate, provides that an association may allocate its transfer to a political committee or fund registered with the Board either by identifying from its donors those to whom it wants to allocate the transfer or by pro-rating the transfer over all of its donors. After applying either method, if the amount of the transfer allocated to an individual source is $1,000 or more, the name and address of that

source must be itemized on a statement of underlying sources.

If MFC uses general treasury funds to promote or defeat a ballot question, it must prepare a statement of underlying sources and file it with the Board along with its next regular Report of Receipts and Expenditures.

The underlying calculations resulting in the allocation, including information related to the choice of allocation method, is retained with the donor association and not provided to the Board at any time.

In the event of a Board investigation of a complaint related to the allocation, it is possible that records of the calculation of the allocation could be requested by the Board. However, it is the Board's intention that in such a case, the donor association providing the records would substitute numbers for the actual names and addresses of the general treasury donors whose donations were part of the allocation. This would prevent the identification of donors whose names are not required to be itemized under §10A.27, subd. 15.

Issue Two

If MFC makes contributions from its general funds to Minnesota for Marriage (MFM), a registered ballot question committee promoting the Minnesota Marriage Amendment, must those contributions be made from the MFC Political Fund or can MFC contribute to MFM directly from its general treasury funds? Are there different reporting and disclosure requirements depending on whether the contributions to MFM are made from MFC general treasury funds or MFC Political Fund? What are the reporting and disclosure differences as they relate to the underlying source(s) of the contributions?

Opinion

Because MFC has registered a ballot question political fund with the Board, it may make contributions to MFM by allocating general treasury funds to its own political fund and then making a contribution to MFM that will be reported through its political fund account. In the alternative, MFC may make contributions to MFM directly using its general treasury funds. In either case, the underlying source disclosure requirements of §10A.27, subd. 15, apply. In the case of the transfer to MFC's own political fund account, MFC would create an underlying source disclosure statement and file it with its next political fund account report. In the case of a direct contribution from general treasury funds to MFM, MFC would create an underlying source disclosure statement and provide it to MFM for filing with MFM's next report.

If MFC donates directly to MFM, MFM will report the contribution received from MFC, along with any required underlying source disclosure. The MFC Political Fund will have no reporting obligation with respect to the transaction.

If MFC donates to MFM by first allocating general treasury funds to the MFC Political Fund, then the MFC Political Fund will report the allocation to it of MFC general funds, along with any required underlying source disclosure. MFC Political Fund will also report the contribution to MFM. MFM will report the receipt of a contribution from the MFC Political Fund, but would not receive or report any underlying source disclosure because the contribution would be coming from an association that has a political fund registered with and reporting to the Board.

Issue Three

If MFC makes expenditures to promote the Marriage Amendment, may those expenditures be made from MFC general treasury funds or must the expenditures be made from the MFC Political Fund?

Opinion

A "political fund," as defined by §10A.01, subd. 28, is an accumulation of money by an association, such as MFC, whose major purpose is something other than to influence the nomination or election of candidates or to promote or defeat a ballot question. This accumulation of money consists of money "collected or expended to influence the nomination or election of a candidate or to promote or defeat a ballot question."

Thus, once MFC makes expenditures to promote the Marriage Amendment, the money used for those expenditures becomes a part of this accumulation of money used to promote or defeat a ballot question or, in other words, a part of its political fund. This characterization occurs automatically by virtue of the statutory definition. A political fund account is an accounting mechanism used for reporting, not an entity separate from the association that accumulates and spends the money that constitutes its political fund.

The question's implication that an association's political fund and its general treasury are mutually exclusive does not accurately reflect the nature of political funds. Money from an association's general treasury, once used to promote or defeat a ballot question, must be tracked through the association's political fund accounting mechanism for reporting purposes. While many associations establish a separate depository account for money that constitutes its political fund, it is not the separate account that makes an association's money part of its political fund; it is the purpose for which the money was raised or used.

Issue Four

If MFC makes expenditures from its general treasury funds to promote the Marriage Amendment, is MFC required to report such expenditures? Is it required to disclose all MFC donors over $100 during the calendar year? How must such expenditures be reported? May they be reported as in-kind contributions to MFM?

Opinion

As indicated in the response to Issue Three, MFC's political fund consists of money collected or expended to promote or defeat a ballot question. Thus, once general treasury funds are used to promote or defeat a ballot question, they must be tracked through MFC's political fund accounting mechanism and reported on the Report of Receipts and Expenditures related to that account. Expenditures that aggregate more than $100 in a calendar year to a single payee must be itemized on a report. Other expenditures are reported as a lump-sum unitemized total.

Donors to MFC's general treasury are not itemized except, potentially, as underlying sources as described in Issue Two. However, "contributions" to MFC as that word is defined in Chapter 10A and applied through the Board's guidance means money that is given for the purpose of influencing a ballot question. "Contributions" must be itemized through the political fund account if they aggregate more than $100 in a calendar year from a single source.

Minnesota Statutes section 10A.27, subd. 15, provides a mechanism for associations to

contribute or transfer money to registered political committees or funds. However, neither that provision nor any other provides for making expenditures without registering and reporting through a political fund if the threshold for doing so is met. MFC has already registered a political fund. Any expenditures MFC makes to promote or defeat a ballot question must be reported through its political fund account. They may not be reported as in-kind donations to MFM.

Issue Five

What must MFC Political Fund disclose to the Board as the result of an allocation of MFC general treasury funds to it?

Opinion

MFC Political Fund is an accounting mechanism. As such, MFC will record transfers or allocations to its political fund account under either of two options. First, MFC may decide to allocate specific amounts from time to time to be used to promote or defeat a ballot question. Under this option, it would record an accounting entry documenting the allocation to the political fund each time it makes such an allocation.

Alternatively, MFC may account for its general treasury funds in its general treasury account until such time as funds are actually used for an expenditure to promote or defeat a ballot question. Under this option, when a ballot question expenditure is made, MFC would record an accounting entry documenting both the allocation of general treasury funds to the political fund and the corresponding use of the funds to promote or defeat a ballot question.

Associations using *only* their own general treasury funds to make ballot question expenditures may use a more abbreviated accounting mechanism. These associations must report to the Board ballot question expenditures, but are not required to report each allocation of general treasury funds used to make reportable expenditures. Because these associations are using only their own general treasury funds, the Board assumes an equal corresponding allocation of general treasury funds for each reported expenditure. Under this reporting option, the association would provide underlying source disclosure based on the total reportable expenditures because the total would result from the same amount of general treasury funds allocations to the association's political fund account.

Prior to the time each of its periodic reports must be filed, MFC must prepare a statement of underlying sources of general treasury funds used to promote or defeat a ballot question. The statement will cover all general treasury money used since the most recent previous report filed for the same calendar year. MFC will file the statement with its periodic political fund report.

The type of accounting mechanism that MFC must use to record the use of money to promote or defeat a ballot question is not specified in statute. The Board has recognized that it may be any accounting mechanism that results in keeping accurate records.

Issue Six

MFC receives donations, both large and small, to its general fund, possibly including anonymous gifts and contributions. How does the Board's Guidance apply to the allocation of funds from MFC to the MFC Political Fund where some of the funds allocated include donations to MFC from donors whose identity is unknown?

Opinion

The Board takes the statement in this question literally; that is, it refers to general treasury funds for which the donor is actually unknown, as opposed to funds for which the donor wishes to remain anonymous to the public. This opinion also assumes that there has been no effort to turn known donors into "anonymous" donors by suggesting, implying, or otherwise influencing them to make their donations anonymously. Such actions could constitute circumvention of the disclosure provisions of Chapter 10A.

However, in the case of an association using its general treasury funds to promote or defeat a ballot question, the immediate source of the funds is the association. Donors to the association's general treasury are underlying sources.

The Board declines to apply the anonymous donor prohibition further than to the immediate source of funds being used to promote or defeat a ballot question. If an anonymous donor is an underlying source of those funds that would be itemized on a statement of underlying sources, the donor should be listed as "Anonymous donor #1" with additional anonymous donations being numbered sequentially.

Issue Seven

Is an expenditure by MFC of general treasury funds to promote the Marriage Amendment an in-kind contribution to the MFC Political Fund, subject to reporting by MFC Political Fund? Or alternatively an in-kind contribution to MFM subject to reporting by MFM?

Opinion

An expenditure by MFC will never be an in-kind contribution to the MFC Political Fund. Because the fund is merely the accounting of all money raised or used to promote or defeat a ballot question, an MFC general treasury funds expenditure to promote or defeat a ballot question is, by definition, a part of its political fund account which will be reported when MFC files its political fund report.

MFC may not report its expenditures as in-kind contributions to MFM. As indicated in Issue Four above, Chapter 10A does not provide a means by which an association may make an expenditure that is not reported through its own political fund if the registration and reporting threshold has been met. The registration and reporting threshold that will be applied by the Board is reached when the association has received contributions or made expenditures of more than $5,000 to promote or defeat a ballot question.

Issue Eight

When MFC writes in its regular publications such as its newsletter, or on its website, or in other educational materials regarding the importance of passage of the Marriage Amendment, may MFC pay such costs as part of its normal program budget or must those costs all be paid by the MFC Political Fund?

Opinion

The question is not whether these costs may be paid from one account or another. As has been explained in other sections of this Opinion, money becomes a part of an association's political fund when it is *used* to promote or defeat a ballot question. So whether the money is in

one budget or another or one depository or another is not relevant.

The board assumes that the intent of the question is to ask whether the costs of the subject communications must be reported on the association's political fund report. Although the question provides little detail, it appears that the subject communications are for the purpose of promoting a ballot question. Thus, the costs of the communications are ballot question expenditures and must be reported on MFC's political fund report.

Issue Nine

The Minnesota Family Institute ("MFI") is a 501(c)(3) subsidiary/affiliate of MFC. If MFI makes expenditures from its general funds for research and policy papers promoting the importance of marriage in Minnesota, describing the social and economic toll on our state resulting from the breakdown of traditional marriage, and encourages people to support the Marriage Amendment, must the MFI report those expenditures to the Board as in-kind contributions? Do such expenditures trigger any additional disclosure(s) to the Board from MFI regarding MFI donors and, if so, what are those disclosures and reporting obligations?

Opinion

MFI is a separate corporation from MFC and is subject to the same Chapter 10A requirements as any other association. If MFI makes expenditures of more than $5,000 to promote or defeat a ballot question, it has two options for complying with Chapter 10A. First, it may register its own political fund with the Board and report its expenditures through that account. Under this option, MFI will provide disclosure of *its* underlying sources used to make ballot question expenditures in the same way that other associations do. Second, it may donate money from its general treasury funds to political committees registered with the Board or to the political fund account of associations that have political funds registered with the Board.

As explained in Issue Four, an association that makes expenditures to promote or defeat a ballot question in excess of the threshold must register a political fund account with the Board and report its expenditures through that account.

Issue Ten

If MFI transfers general funds to MFC's general fund, and MFC subsequently uses its general funds to promote the Marriage Amendment, would MFI's transfer to MFC trigger any additional disclosure(s) to the Board from MFI regarding MFI donors and, if so, what are those disclosures and reporting obligations?

Opinion

As a subsidiary/affiliate of MFC, the Board assumes that MFI is directly or indirectly controlled by MFC or that MFC closely coordinates its financial activities with those of MFI.

If that is the case, then transfers from MFI to MFC that are later used to promote or defeat a ballot question are considered to be "contributions" under Chapter 10A. A "contribution" is a transfer of money for the purpose of promoting or defeating a ballot question. Treatment of the transfer as a contribution results in the requirement that MFI provide underlying source disclosure pursuant to §10A.27, subd. 15. In other words, because of the commonality of

control of the two corporations, MFI cannot be considered to be merely another underlying source for MFC's general treasury funds used to promote or defeat a ballot question.

Issue Eleven

Are all contributions to MFC or MFI over $100 subject to reporting to the Minnesota Campaign Finance Board by virtue of references to the Marriage Amendment in solicitations as one of the projects and activities in which MFC and MFI are involved, even if not solicited specifically to promote the Marriage Amendment and if each solicitation clearly stipulates that no contributions may be designated or earmarked for any purpose?

Opinion

The word "contributions" is specifically defined in Chapter 10A and limits on its application have been provided in Board guidance. The Board interprets the question as referring to "donations" to MFC or MFI rather than to "contributions" as the word is defined in Chapter 10A. This is not to say, of course, that donations to MFC or MFI may not also be contributions under Chapter 10A. This is, in fact, the issue raised by the question.

On October 14, 2011, the Board adopted the following Statement of Guidance regarding the application of the Chapter 10A definition of "contribution":

> **1. Money designated for ballot question expenditure purposes**
> Money received by an association is a contribution if the contributor specified that the money was given to support the association's campaign to promote or defeat the ballot question.
>
> **2. Money given in response to a solicitation including an express request**
> Money given in response to a solicitation that requests money for the express purpose of supporting the association's campaign to promote or defeat the ballot question is a contribution.
>
> An express request is a request that asks for money and states that the money is sought to support the ballot question campaign.
>
> **3. Money given in response to a solicitation that is the functional equivalent of an express request.**
>
> Money given in response to a solicitation that meets the all of the following criteria is a contribution:
>
> > A) The solicitation is made after the date of final enactment by the legislature of the bill placing the subject ballot question on the general election ballot;
> >
> > B) The solicitation clearly identifies the subject ballot question; and
> >
> > C) The solicitation is susceptible to no reasonable interpretation other than that money given as a result of the solicitation will be used to promote or defeat the subject ballot question.

For the purpose of determining whether a solicitation clearly identifies the ballot question, the "solicitation" includes:

A) For a mailed solicitation: the solicitation itself and any material included in the same mailing;

B) For an electronically transmitted solicitation: the electronic communication itself and any attachments to the communication. An electronic solicitation also includes material accessed directly by a hyperlink in the solicitation or its attachments. Intermediate hyperlinks inserted merely to subvert the direct link requirement will not be considered when examining whether the solicitation directly links to a page that refers to the subject ballot question;

C) For a website based solicitation: the solicitation form itself and all other pages of the association's website.

Limitation
It is the Board's intention that the definitions of "contribution" set forth in this Guidance be applied in favor of excluding transfers of money from the definition of "contribution" in any case where it is not clear that all of the specified criteria have been met.

From the facts provided in your statement of the issue, it is clear that parts 1 and 2 of the definition of "contribution" do not apply to the transactions about which you inquire.

With respect to the application of the definition of "contribution" in part 3 of the guidance, requirements A and B are met. That is, the question has already been placed on the ballot by the legislature and, according to the premise of the question, the solicitation will identify the subject of the ballot question.

However, part C of the definition requires that the solicitation be "susceptible to no reasonable interpretation other than that money given as a result of the solicitation *will be used* to promote or defeat the subject ballot question." (Emphasis added.)

Without specific text or specific web pages to examine, the Board's evaluation of the fact situation must be, as the fact situation is itself, somewhat hypothetical. However, the Board has made it clear that when determining whether money given is a "contribution" its guidance is to be applied in favor of excluding transfers where the requirements of the definition are not clearly met.

Under the facts presented, the solicitation suggests that money raised could be used for any of a range of the association's various projects and activities. While donors may "assume" that some or even all of their donation will be used to promote or defeat a ballot question, and the association may actually end up using it for that purpose, disclosure requirements are not based on assumptions.

The Board concludes that the hypothetical solicitation is subject to interpretations other than that any donations resulting from it *will*, in fact, be used to promote or defeat a ballot question. Thus, funds received as a result of the hypothetical

solicitation presented in the question would not be "contributions" under Chapter 10A. While the donors may be subject to underlying source disclosure as discussed in other sections of this opinion, the donations are not reportable as "contributions," which must be itemized when they are more than $100.

Issued December 8, 2011

/s/ John Scanlon

John Scanlon, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes

10A.01 DEFINITIONS

. . .

Subd 18b. **Independent expenditure political fund.** “Independent expenditure political fund” means a political fund that makes only independent expenditures and disbursements permitted under section 10A.121, subdivision 1.

. . .

Subd. 28. **Political fund.** "Political fund" means an accumulation of dues or voluntary contributions by an association other than a political committee, principal campaign committee, or party unit, if the accumulation is collected or expended to influence the nomination or election of a candidate or to promote or defeat a ballot question.

10A.12 POLITICAL FUNDS.

. . .

Subd. 5. **Dues or membership fees.** An association may, if not prohibited by other law, deposit in its political fund money derived from dues or membership fees. Under section 10A.20, the treasurer of the fund must disclose the name of any member whose dues, membership fees, and contributions deposited in the political fund together exceed $100 in a year.

10A.121 INDEPENDENT EXPENDITURE POLITICAL COMMITTEES AND INDEPENDENT EXPENDITURE POLITICAL FUNDS

Subdivision 1. **Permitted disbursement.** An independent expenditure political committee or an independent expenditure political fund, in addition to making independent expenditures, may:

(1) pay costs associated with its fund-raising and general operations;

(2) pay for communications that do not constitute contributions or approved expenditures; and

(3) make contributions to other independent expenditure political committees or independent expenditure political funds.

10A.27 CONTRIBUTIONS

. . .

Subd. 14. **Contributions of business revenue.** An association may, if not prohibited by other law, contribute revenue from the operation of a business to an independent expenditure political committee or an independent expenditure political fund without complying with subdivision 13.

Subd. 15. **Contributions of dues or contribution revenue.** (a) An association may, if not prohibited by other law, contribute revenue from membership dues or fees, or from contributions received by the association to an independent expenditure political committee or an independent expenditure political fund without complying with subdivision 13. Before the day when the recipient committee or fund's next report must be filed with the board under section 10A.20, subdivision 2 or 5, an association that has contributed $5,000 or more in

aggregate to independent expenditure political committees or funds during the calendar year must provide in writing to the recipient's treasurer a statement that includes the name, address, and amount attributable to each individual or association that paid the association dues or fees, or made contributions to the association that, in total, aggregate $1,000 or more of the contribution from the association to the independent expenditure political committee or fund. The statement must also include the total amount of the contribution from individuals or associations not subject to itemization under this section. The statement must be certified as true and correct by an officer of the donor association.

(b) To determine the membership dues or fees, or contributions made by an individual or association that exceed $1,000 of the contribution made by the donor association to the independent expenditure political committee or fund, the donor association must:

(1) apply a pro rata calculation to all unrestricted dues, fees, and contributions received by the donor association in the calendar year; or

(2) as provided in paragraph (c), identify the specific individuals or associations whose dues, fees, or contributions are included in the contribution to the independent expenditure political committee or fund.

(c) Dues, fees, or contributions from an individual or association must be identified in a contribution to an independent expenditure political committee or fund under paragraph (b), clause (2), if:

(1) the individual or association has specifically authorized the donor association to use the individual's or association's dues, fees, or contributions for this purpose; or

(2) if the individual's or association's dues, fees, or contributions to the donor association are unrestricted and the donor association designates them as the source of the subject contribution to the independent expenditure political committee or fund. After a portion of an individual's or association's dues, fees, or contributions to the donor association have been designated as the source of a contribution to an independent expenditure political committee or fund, that portion of the individual's or association's dues, fees, or contributions to the donor association may not be designated as the source of any other contribution to an independent expenditure political committee or fund.

(d) For the purposes of this section, "donor association" means the association contributing to an independent expenditure political committee or fund that is required to provide a statement under paragraph (a).

Subd. 16. **Treasurer to submit disclosure statements.** The treasurer of a political committee or political fund receiving a statement required under subdivision 15, must file a copy of the statement before the deadline for the committee or fund's next report filed with the board under section 10A.20, subdivision 2 or 5, after receiving the statement.

Subd. 17. **Penalty.** (a) An association that makes a contribution under subdivision 15, and fails to provide the required statement within the time specified is subject to a civil penalty of up to four times the amount of the contribution, but not to exceed $25,000, except when the violation was intentional.

(b) An independent expenditure political committee or an independent expenditure political fund that files a report without including the statement required under subdivision 15, is subject to a civil penalty of up to four times the amount of the contribution for which disclosure was not filed, but not to exceed $25,000, except when the violation was intentional.

(c) No other penalty provided in law may be imposed for conduct that is subject to a civil penalty under this section.