

State of Minnesota
Campaign Finance & 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: Definition of express advocacy

ADVISORY OPINION 428

SUMMARY

Under Chapter 10A an association other than a principal campaign committee, party unit, or political committee, is not required to register and provide disclosure of communications naming candidates unless those communications use words of express advocacy.

FACTS

As the attorney for an association (the Association), you ask the Campaign Finance and Public Disclosure Board for an advisory opinion. Your request is based on the following assumed facts, which you have provided:

1. The Association is a nonprofit corporation that is exempt from federal income taxation under section 501(c)(4) of the Internal Revenue Code (IRC).
2. The Association engages in activities, including public communications, to promote its positions on various federal public policy issues.
3. The Association relies on voluntary donations from others to support its activities.
4. The Association is considering conducting similar activities in Minnesota that will focus on state public policy issues.
5. The Association is considering whether to engage in Minnesota communications itself or to form a separate corporation for that purpose, which it assumes would also be exempt from federal taxation under IRC section 501(c)(4).
6. The Association or the new association intends to communicate with members of the Minnesota general public through mass media communications to advance state public policy issues.
7. These communications may refer to incumbent officeholders or candidates for state office.
8. The communications will not use words such as "vote for," "defeat," or "reelect."
9. The communications will not be coordinated with any of the identified candidates or their opponents.

Based on the above assumed facts, you ask for an advisory opinion addressing the following question:

Question

If an association avoids using in its communications the explicit words of express advocacy such as "vote for," "elect," "vote against," "defeat," and similar words, and avoids coordination with candidates, is the association excluded from classification as a political committee or as an association with a political fund and, thus, exempt from the registration and reporting requirements of Chapter 10A?

Opinion

The hypothetical facts state that both the existing association and a new association formed to engage in communications in Minnesota would be a 501(c)(4) tax exempt organizations. Based on Internal Revenue Code provisions, this means that the major purpose of either association is something other than to influence the nomination or election of candidates in Minnesota. Therefore, the Association will not be a political committee regardless of its communications because a political committee is, by definition, an association whose major purpose is to influence the nomination or election of candidates or to promote or defeat a ballot question.

If the Association is required to provide disclosure, it will be through a political fund account. A political fund is defined in Minnesota Statutes section 10A.02, subdivision 28, as

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.

Under both U.S. Constitutional law in *Buckley v. Valeo* 424 U.S. 1 (1976) and under Minnesota law in *Minnesota Citizens Concerned for Life v. Kelley*, 698 NW2d 424 (Minn. 2005), the phrase "to influence" has been narrowly construed in the case of associations that are not political committees to be limited to communications that expressly advocate to influence the nomination or election of candidates.¹

Subsequent to *Buckley*, the U.S. Supreme Court opinions, including those of *McConnell v. FEC* 540 U.S. 93 (2003) and *FEC v. Wisconsin Right To Life (WRTL)* 551 U.S. 449 (2007), have held that communications that were the "functional equivalent" of express advocacy could also trigger disclosure requirements as communications to influence the nomination or election of candidates. Communications that are the functional equivalent of express advocacy are those that are subject to no reasonable interpretation other than that their purpose is to influence the nomination or election of candidates or to promote or defeat a ballot question.

In Minnesota, both independent expenditures, as a type of communication, and political funds, as an accumulation of money, are defined in terms of express advocacy.

¹ The Board recognizes that an association that advocates to promote or defeat a ballot question may also be required to provide disclosure through a political fund account. However, questions concerning registration and disclosure of ballot question political funds are not before the Board in this request.

