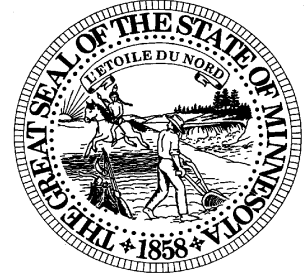


Minnesota

Campaign Finance and

Public Disclosure Board



Date: April 24, 2012

To: Board Members

From: Gary Goldsmith, Executive Director

Telephone: 651-296-1721

Re: Draft Procedures for requesting exemption from the requirement to provide name, address, and employment information for contributions of more than \$100

This document presents for Board consideration a set of procedures that, if adopted, will specify the process for an individual requesting the right to make contributions under Chapter 10A without disclosing the individual donor's identifying information. The purpose of these procedures is to implement the requirements of Minnesota Statutes section 10A.20, subdivision 9, and the associated Minnesota Rules related to that section.

These procedures do not address the law applicable to deciding whether to grant or deny an application for exemption, nor do they address exemption requests from associations rather than from individuals.

**Procedures for requesting exemption from requirement
to provide and disclose identifying information
for contributions of more than \$100**

1. Exemption

An exemption granted under Minnesota Statutes section 10A.20, subdivision 9, relevant Minnesota Rules, and these procedures, exempts the individual contributor from the requirement that the contributor provide his or her name, address, and employment information with any contribution of more than \$100 to any recipient included in the scope of the order granting the exemption. The exemption also exempts the recipient association from the requirement that it record and report the name, address, and employment information for the individual to whom the order is issued.

2. Proceeding in one's true and correct name

While permitted, the Board does not anticipate an applicant for exemption proceeding in the applicant's true name because to do so could result in the type of publicity the potential donor wishes to avoid by seeking the exemption from disclosure. Therefore, these procedures are intended to provide a framework for applications for exemption in which the applicant's identity is protected from public disclosure.

3. Anonymous proceeding

- (a) An anonymous proceeding is a public proceeding in which an applicant uses a pseudonym. In this proceeding, the application document and supporting materials are public data and the Board's consideration of whether to grant or deny the exemption will occur at a Board meeting open to the public. In this proceeding, the Board may question the applicant concerning the applicant's need to proceed anonymously. If it does so, that portion of the proceeding will occur at a Board meeting not open to the public and not publicly announced.
- (b) An applicant may initiate an application for exemption in an anonymous proceeding by filing an application meeting the requirements of section 4 of these procedures.
- (c) In an anonymous proceeding, the identity of the applicant will not be disclosed to the public. Disclosure of the identity of the applicant to Board members or staff will be restricted to the extent possible.

4. Content of application for exemption in an anonymous proceeding

The application of an applicant who wishes to proceed anonymously must comply with the following requirements.

- (a) The application must include a clear statement that the applicant has elected to proceed anonymously.
- (b) The application must be submitted using a pseudonym by which the applicant wishes to be known for the purposes of the proceeding.
- (c) The applicant must provide the true and correct name, address, and telephone number of a person who is authorized to receive official notices or correspondence from the Board or upon whom service of legal process may be made. At the applicant's option, the telephone number may be provided separately to Board and will remain not public data.
- (d) If different from the person identified in part c of this section, the applicant must provide the true and correct name, address, and telephone number of a person who is authorized to appear for the applicant during the proceedings. At the applicant's option, the telephone number may be provided separately to Board and will remain not public data.
- (e) The application must state the scope of the exemption requested in sufficient detail for the Board to understand the request. For example, an application could state that its scope is to cover all contributions made to political committees or funds supporting the Minnesota photo ID amendment.
- (f) The application must include a sworn statement of the facts submitted by the applicant to justify proceeding anonymously.
- (g) The application must include a sworn statement of the facts supporting the applicant's contention that disclosure of the applicant's name, address, or

employment information would expose the applicant to the type of harm that would require the Board to issue an order of exemption.

- (h) The truth of the application must be sworn to and signed by the applicant under oath. In the case of an applicant who is proceeding anonymously, the applicant may sign in the name identified under part b of this section. Board staff are available to administer oaths and notarize affidavits for anonymous applicants.
- (i) At the applicant's option, the application may include a legal memorandum or such other information as the applicant believes supports the application.

5. Board review of need for anonymous proceeding

- (a) An application for exemption in an anonymous proceeding may be accepted by the Executive Director, contingent on possible Board review of the applicant's need to proceed anonymously.
- (b) Upon receipt of an application for exemption in an anonymous proceeding, the Executive Director must notify the Board Chair and Vice Chair of the receipt of the application. Upon direction of either the Chair or Vice Chair, the Executive Director must schedule a special meeting of the Board to rule on the request to proceed anonymously; not for the purpose of ruling on the exemption itself.
- (c) A special meeting called pursuant to section 5(b) of these procedures will not be open to the public and public notice of the meeting will not be given. The meeting must be held within 20 days after receipt of the application unless the applicant agrees to a longer time. The applicant may be asked to provide testimony directed to the need to proceed anonymously.
- (d) If the Board holds a hearing under this section, the Board will decide whether to grant the applicant's request for an anonymous proceeding. The form of motion that will be considered is a motion to grant the applicant's request for an anonymous proceeding. The vote of four Board members is required for the motion to be adopted. If the motion is not adopted, the request for an anonymous proceeding is not granted.
- (e) If the motion to permit an anonymous proceeding is not adopted, the applicant may withdraw the application.
- (f) An applicant who withdraws an application pursuant to part (e) of this section is not precluded from filing a subsequent application.

6. Conduct of anonymous proceeding

- (a) An application for exemption in an anonymous proceeding, along with any supporting materials, is public data. Board consideration of the merits of the application for exemption will occur at a regular or special meeting of the Board open to the public and subject to the notice requirements for public meetings.

- (b) In the event that the next scheduled meeting is more than 30 days after receipt of the application, the Board will schedule a special meeting for the purpose of considering the application.
- (c) No testimony will be taken during the meeting at which the Board considers the merits of the application for exemption.

7. Confidential proceeding

- (a) A confidential proceeding is a proceeding in which an applicant uses a pseudonym. In this proceeding, the application document and supporting materials are not public data and the Board's consideration of whether to grant or deny the exemption will occur at a special meeting of the Board, not publicly announced and not open to the public. In this proceeding, the Board may question the applicant concerning the applicant's need to proceed in a meeting not open to the public and to have the application remain not public data. If it does so, that portion of the proceeding will occur at a Board meeting not open to the public and not publicly announced.
- (b) An applicant who believes that the content of an application to proceed anonymously would, nevertheless, result in identification of the applicant and in the applicant's being exposed to the type of harm on which the application for exemption request is based may request that the application be heard in a confidential proceeding.
- (c) An applicant may initiate an application for exemption in a confidential proceeding by filing an application meeting the requirements of section 8 of these procedures.
- (d) In a confidential proceeding, the identity of the applicant will not be disclosed to the public. Disclosure of the identity of the applicant to Board members or staff will be restricted to the extent possible.

8. Content of application for an exemption in a confidential proceeding

- (a) In addition to the requirements for an application for exemption in an anonymous proceeding, an application for an exemption in a confidential proceeding must include a sworn affidavit supporting the applicant's belief that the content of the application itself would result in identification of the applicant, even though the applicant would proceed using a pseudonym.
- (b) The application itself and any cover letter must be clearly marked "Submitted for non-public consideration." The applicant or the applicant's representative should confirm with the Board's Executive Director that the application has been received as an application for exemption in a confidential proceeding.

9. Board review of need for confidential proceeding

- (a) An application for an exemption in a confidential proceeding may be accepted by the Executive Director, contingent on Board review of the applicant's need to

proceed anonymously.

- (b) Upon receipt of an application for exemption in an confidential proceeding, the Executive Director must notify the Board Chair and Vice Chair of the receipt of the application and must schedule a special meeting of the Board to rule on the request for a confidential proceeding; not for the purpose of ruling on the exemption itself.
- (c) A special meeting called pursuant to section 9(b) of these procedures will not be open to the public and public notice of the meeting will not be given. The meeting must be held within 20 days after receipt of the application unless the applicant agrees to a longer time. The applicant may be asked to provide testimony directed to the need for a confidential proceeding.
- (d) The Board will decide whether to grant the applicant's request for a confidential proceeding. The form of motion that will be considered is a motion to grant the applicant's request for a confidential proceeding. The vote of four Board members is required for the motion to be adopted. If the motion is not adopted, the request for a confidential proceeding is not granted.
- (e) If the motion to permit a confidential proceeding is not adopted, the applicant may withdraw the application in which case the application will remain not public data and no public order will be issued.
- (f) In lieu of withdrawing the application, the applicant may request that the application be considered as an application for exemption in an anonymous proceeding. If such a request is made, the application will be considered under the procedures established in this document for anonymous proceedings.
- (g) If the applicant elects to proceed in an anonymous proceeding, consideration of the application shall take place at a regular or special meeting of the Board not more than 30 days after the date of the original application, unless the applicant agrees to a longer time.
- (h) An applicant who withdraws an application pursuant to part (e) of this section is not precluded from filing a subsequent application.

10. Conduct of confidential proceeding

- (a) After the Board has approved an applicant's request for a confidential proceeding, the Board will consider the merits of the application for exemption at a special meeting of the Board not open to the public and for which public notice will not be given.
- (b) In the event that the next scheduled meeting is more than 30 days after receipt of the application, the Board will schedule a special meeting for the purpose of considering the application. A special meeting for the purpose of conducting a confidential proceeding may occur immediately after the meeting at which the Board considers the request for a confidential proceeding under section 9 of these procedures.

- (c) No testimony will be taken during the meeting at which the Board considers the merits of the application for exemption.

11. Motion and vote on order for exemption

- (a) An application for an exemption from the contribution itemization requirement is a request to be exempted from otherwise applicable statutory requirements. Unless the exemption is granted, the statutory requirements apply. The proper motion for Board consideration is either a motion to grant the exemption or a motion to deny the exemption. A motion to grant an exemption is adopted if it obtains the required four votes. If a motion to grant the exemption fails, the exemption is denied even if a motion to specifically deny the exemption does not obtain four votes. If the exemption is not granted, the statutory itemization requirement applies.
- (b) Following its consideration of the matter, the Board will issue a written order granting or denying the application. The order must include the reasons for the Board's action.

12. Publication of order and notice to interested persons

The Board's order will be published in the next available issue of the State Register. Notice will be given to all persons who have signed up on the Board's subscription email list for persons interested in Board actions.

13. Filing of objections

(This section is under development. The procedures set forth in this section are preliminary and subject to further development or change.)

Any interested party may file an objection to a Board order granting or denying an application for exemption. An objection must be filed in writing and signed by the person making the objection. The objection must include the objector's name, address, and contact information and must state the grounds for the objection.

14. Procedure upon objection to order by interested person

(This section is under development. The procedures set forth in this section are preliminary and subject to further development or change.)

- (a) In the event of an objection by an interested person to an order for exemption, the Board will initiate a contested case hearing before the Office of Administrative Hearings.
- (b) Prior to the commencement of the contested case hearing, the Board will reconsider its decision and order based on the objection. The objecting individual may submit any affidavits, memoranda, or other materials that bear on the matter under review.

15. Contested case hearing

(This section is under development. The procedures set forth in this section are preliminary and subject to further development or change.)

- (a) A contested case hearing conducted by the Office of Administrative Hearings will be in the form of a *de novo* proceeding and will result in Findings of Fact and a Recommended Order by the Administrative Law Judge.
- (b) Review by the Administrative Law Judge of a Board decision to grant or deny an applicant's request to proceed anonymously or to proceed in a confidential proceeding will be reviewed only under an abuse of discretion standard.
- (c) In the case of an applicant proceeding anonymously or in a confidential proceeding, a protective order shall be issued by the Administrative Law Judge to preserve the anonymity of the applicant.

16. Reporting contributions for which an itemization exemption has been granted.

- (a) If an exemption from the itemization requirement is granted, the recipient of contributions from the individual possessing the exemption is not required to obtain the individual's true name and address or employment information.
- (b) Contributions should be reported in the form "Anonymous Donor [Assumed Name] under Order Granting Exemption dated [Date of Order].
- (c) If an exemption is granted for a contribution previously made, the contribution must be reported with the information described in part (b) of this section on the next report filed by the recipient or on an amended report for the same period.

Comparison Grid
(For informational purposes only)

Type of proceeding	Anonymous	Confidential
Use pseudonym	Yes	Yes
Board approval to proceed in this format	Optional with Board	Required
Hearing on approval to proceed in this format	If held, not public	Not public
Hearing on application for exemption	Public	Not public
Order granting or denying exemption	Public	Public but will not include identifying information

Minnesota Statutes

10A.20 Campaign Reports

Subd. 8. Exemption from disclosure. The board must exempt a member of or contributor to an association or any other individual, from the requirements of this section if the member, contributor, or other individual demonstrates by clear and convincing evidence that disclosure would expose the member or contributor to economic reprisals, loss of employment, or threat of physical coercion. An association may seek an exemption for all of its members or contributors if it demonstrates by clear and convincing evidence that a substantial number of its members or contributors would suffer a restrictive effect on their freedom of association if members were required to seek exemptions individually.

Subd. 9. [Repealed, 1978 c 463 s 109]

Subd. 10. Exemption procedure. An individual or association seeking an exemption under subdivision 8 must submit a written application for exemption to the board. The board, without hearing, must grant or deny the exemption within 30 days after receiving the application and must issue a written order stating the reasons for its action. The board must publish its order in the State Register and give notice to all parties known to the board to have an interest in the matter. If the board receives a written objection to its action from any party within 20 days after publication of its order and notification of interested parties, the board must hold a contested case hearing on the matter. Upon the filing of a timely objection from the applicant, an order denying an exemption is suspended pending the outcome of the contested case. If no timely objection is received, the exemption continues in effect until a written objection is filed with the board in a succeeding election year. The board by rule must establish a procedure so that an individual seeking an exemption may proceed anonymously if the individual would be exposed to the reprisals listed in subdivision 8 if the individual's identity were to be revealed for the purposes of a hearing.

Minnesota Rules

4525.0900 Initiating a contested case

Subpart 1. **Initiation by application.** Any person requesting an exemption under Minnesota Statutes, section 10A.20, subdivisions 8 and 10, or any other person whose rights, privileges, and duties the board is authorized by law to determine after a hearing, may initiate a contested case by making application. Except in anonymous proceedings, an application shall contain: the name and address of the applicant; a statement of the nature of the determination requested including the statutory sections on which the applicant wishes a determination made and the reasons for the request; the names and addresses of all persons known to the applicant who will be directly affected by such determination; and the signature of the applicant.

Subp. 2. **Initiation by board order.** Where authorized by law, the board may order a contested case commenced to determine the rights, duties, and privileges of specific parties.

4525.1000 Initiating anonymous proceedings

Subpart 1. **Authority.** Any person making application for an exemption from campaign reporting requirements under Minnesota Statutes, section 10A.20, subdivisions 8 and 10 may proceed anonymously if the board determines that identification of the person for the purpose of the hearing would result in exposure to economic reprisals, loss of employment, or threat of physical coercion.

Subp. 2. **Application.** Any person wishing to proceed anonymously under this part shall make an application under part 4525.0900, subpart 1, which shall contain:

A name by which the person wishes to be known for the purposes of the proceeding;

The name and address of a person who is authorized to receive official notices or correspondence from the board or upon whom service of legal process may be made;

A statement of the facts which lead the applicant to believe that identification of the applicant for purposes of the hearing would result in exposure to economic reprisals, loss of employment, or threat of physical coercion;

The name and address of a person who will appear for the applicant during the proceedings if the applicant wishes to remain anonymous;

A statement of the facts which lead the applicant to believe that exposure to economic reprisal, loss of employment, or threat of physical coercion would result from the applicant's compliance with the reporting and disclosure requirements of Minnesota Statutes, section 10A.20; and

The signature of the applicant in the name by which the person wishes to be known during the proceedings or the signature of the person designated to appear for the applicant.

Subp. 3. **Determination.** Upon receipt of an application for initiation of anonymous proceedings, the board may require the applicant or the person designated to appear for the applicant to appear before a closed meeting of the board with appropriate precautions taken to preserve the anonymity of the applicant from persons other than the board and its employees. The purpose of the appearance is to enable the board to decide whether an anonymous proceeding is required.

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: Creation and operation of a conduit fund by a union

ADVISORY OPINION 425

SUMMARY

A “conduit fund” organized and administered by a union, but otherwise in accordance with the express and implied provisions of Minnesota Statutes section 211B.15, subdivision 16, is not a political committee or political fund under Minnesota Statutes Chapter 10A, and is not required to register with the Board. A union may contract with an individual for the administration of its sponsored conduit fund.

FACTS

As the representative of the a Minnesota local trade union (the Union), you ask the Campaign Finance and Public Disclosure Board for an advisory opinion based on the following facts:

1. The Union is organized as the local branch of an international union.
2. The Union is aware of the right of corporations to establish conduit funds as recognized under Minnesota Statutes section 211B.15, subdivision 16.
3. The Union wishes to form a fund that would comply with all of the express and implied provisions of Minnesota Statutes section 211B.15, subdivision 16.
4. It is the desire of the Union that the fund it establishes as a result of this request not be a political committee or political fund that would be required to register and report under Minnesota Statutes Chapter 10A.
5. The Union may wish to contract with an outside individual to perform the administrative functions associated with the conduit fund including soliciting the Union's members, receiving and recording member deposits, and making transfers to candidates at the direction of the contributing members.

Issue One

Is a fund established by a union rather than by a corporation, but otherwise operating under the terms of Minnesota Statutes section 211B.15, subdivision 16, and the Board's Advisory Opinions 6 and 406 a political committee or a political fund that is required to register and report under Minnesota Statutes Chapter 10A?

Opinion

The question of corporation-sponsored employee contribution programs was first addressed by the Board in Advisory Opinion 6 in 1974. At that time, Minn. Stat. § 211B.15, subd. 16, had not been enacted, but the concept of a conduit fund existed in federal law. In Advisory Opinion 6, the Board concluded that a corporation may establish a nonpartisan conduit plan to solicit voluntary contributions from employees if the individual employee making the contribution retains sole control over the disposition of the employee's accumulated funds.

The Board's opinion did not establish the authority of corporations to create employee conduit funds. Rather, the central conclusion of the opinion was that under the proposed terms of operation, these newly recognized conduit funds would not constitute political committees or political funds that would be required to register and report under Chapter 10A. Years after the adoption of Advisory Opinion 6, the legislature enacted the concept of the corporate conduit fund into law as Minn. Stat. § 211B.15, subd. 16.

The Board more recently addressed the same question, again at the request of a corporation, in Advisory Opinion 406. There, the Board reaffirmed that a properly formed and managed employee contribution fund would not constitute a political committee or fund under Chapter 10A and, thus, would not be required to register with or report to the Board.

Because the 1974 advisory opinion was requested by a corporation, the resulting opinion was limited to corporate conduit funds. Similarly, because the subsequent legislation codified the earlier advisory opinion, it was also limited in scope to corporate conduit funds. The present request asks the Board to revisit the 1974 question from the perspective of a local labor union.

The request asks, in essence, whether there is some set of policies and procedures by which the union could establish a member contribution fund similar to the conduit funds recognized in Advisory Opinion 6 and 406 and in Minn. Stat. § 211B.15, subd. 16, so that the member contribution fund would not constitute a political committee or political fund under Chapter 10A.

The previous advisory opinions as well as the corporate conduit fund statute all identify the most important characteristics required for a contribution fund to be excluded from the definitions of political committee and political fund. These characteristics are (1) the fund is nonpartisan; (2) any contribution into the fund comes from an individual who is solely responsible for the decision to contribute to the fund; (3) any contribution from the fund to a candidate must be at the sole direction of the individual whose money will be used to make the candidate contribution; and (4) the individual contributor to the fund remains the owner of the money the individual placed in the fund.

The Board's previous opinions that a corporate conduit fund is not covered by the registration and reporting requirements of Chapter 10A were based on the criteria under which the fund would operate. A political committee is a group of two or more people operating in concert. A conduit fund consists of individuals acting individually, each making their own decisions about their political contribution activities. Thus, a conduit fund is not a political committee. A political

fund is an accumulation of an association's money that is used for specified political purposes. A conduit fund consists of money that belongs to the individual participants. The association sponsoring the conduit fund has no ownership or control over each individual's deposits into the conduit fund. Thus, a conduit fund is not a political fund.

Considering the factors that exclude a conduit fund from the definitions of political committee and political fund, the Board finds no legal basis on which to distinguish for Chapter 10A purposes a corporate conduit fund from a similar fund established by a local union for its members. Thus, the Board concludes that a fund operated by a local union and meeting the requirements of a nonpartisan conduit fund, as further described below, is not a political committee or a political fund and is not required to register or report under Chapter 10A.

Based on the concepts established in Advisory Opinions 6 and 406 and recognized in Minn. Stat. § 211B.15, subd. 16, a union member contribution conduit fund may operate without becoming a Chapter 10A political committee or political fund if it complies with the following requirements.

1. All solicitations for contributions to the fund that are directed to union members by the local union must be in writing, must be informational and nonpartisan in nature, and must not be promotional for any particular candidate or group of candidates.
2. The solicitation must consist only of a general request to participate in the fund and must state that there is no minimum contribution and that a contribution or lack thereof will in no way impact the participant's union membership or status.
3. The solicitation must also state that the union member must direct the contribution to candidates of the member's choice, and that any response by the member shall remain confidential and shall not be directed to the member's supervisors or managers or to union leaders. This means that the individual who administers the fund may not be a local, state, or national leader of the union or a union steward.
4. The fund is established and operated by a single local union and only members of that local union are permitted to participate in the fund.
5. The fund must maintain members' contributions in a depository separate from any other depository.
6. Contributing members must direct the distribution to candidates of their contributions to the fund. The local union sponsor may not be involved directly or indirectly in the determination of the recipients of a member's contributions to the fund.
7. When contributions to candidates are made through the fund, the amount of each individual contribution as well as the name and address of the contributor must be provided to the recipient of the contribution.
8. Implicit in the concept of a conduit fund is the member's retention of control over the member's contributions to the fund. In order to fully implement this requirement, a member must be able to withdraw all of the member's contributions to the fund that have not previously been designated by the member for a specific candidate and have not been actually paid to that candidate. Any solicitation of transfers to the fund must include a statement of this right.

Issue Two

May a local union that has a conduit fund organized and administered under the terms of this opinion retain and pay with union funds an individual to handle some or all of the administrative aspects of the fund, including solicitation of the union's members, receiving and recording member deposits, receiving direction from members with regard to making contributions to candidates with the member's funds, and making the transfers to candidates at the direction of the contributing members?

Opinion

If a local union conduit fund meets the requirements set forth in this Opinion under Issue One, the fund's status with respect to Chapter 10A is not altered by the union's decision to pay an individual to administer the fund rather than undertaking that administration with union employees or volunteers. Even if administration of the fund is contracted to another entity, the union retains the responsibility for operation of the fund consistent with this Opinion.

Issued May 1, 2012

Greg McCullough, Chair
Campaign Finance and Public Disclosure Board

Statutory Citations

211B.15 CORPORATE POLITICAL CONTRIBUTIONS.

. . .

Subdivision 16. **Employee political fund solicitation.** Any solicitation of political contributions by an employee must be in writing, informational and nonpartisan in nature, and not promotional for any particular candidate or group of candidates. The solicitation must consist only of a general request on behalf of an independent political committee (conduit fund) and must state that there is no minimum contribution, that a contribution or lack thereof will in no way impact the employee's employment, that the employee must direct the contribution to candidates of the employee's choice, and that any response by the employee shall remain confidential and shall not be directed to the employee's supervisors or managers. Questions from an employee regarding a solicitation may be answered orally or in writing consistent with the above requirements. Nothing in this subdivision authorizes a corporate donation of an employee's time prohibited under subdivision 2.

State of Minnesota
Campaign Finance & Public Disclosure Board
Suite 190, Centennial Building. 658 Cedar Street. St. Paul, MN55155-1603

**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: Disclosure related to ballot question committees

ADVISORY OPINION 426

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 an association (the Requester), you ask for an advisory opinion based on the following facts:

1. The Requester is a social welfare, grassroots lobbying, and policy organization with qualified nonprofit corporation status under Internal Revenue Code section 501 (c)(4).
2. The Requester plans on establishing and registering a political fund in Minnesota for the purpose of supporting the constitutional amendment that will be on the November general election ballot and would, if enacted, place a definition of marriage in the Minnesota Constitution. The proposed amendment is referred to as "the Minnesota ballot question" in this opinion.
3. You are aware of previous Board advisory opinions on the subject of ballot question disclosure. However, because Minnesota statutes provide that an advisory opinion may be relied on only by the person making or covered by the request, you wish to confirm that your client may rely on principles articulated in previous opinions.

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 the Requester.

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 Minn. Stat. § 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 will consist 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 that, 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.

Question One

If The Requester were to make expenditures in excess of \$100 from its general treasury funds in support of the Minnesota ballot question, would The Requester then be required to publicly report all donors who contributed over \$100 regardless of the fact that their support is not or was not designated for the Minnesota ballot question?

Opinion

This question relates to the use of general treasury funds, which, as noted above, consist of both voluntary donations to the association and money that the association characterizes as membership dues or fees. By definition, general treasury funds do not arise from "contributions" as that word is defined in Chapter 10A. This section of this opinion does not apply to money raised by The Requester that would constitute Chapter 10A contributions.

Receipts of general treasury funds are not subject to the reporting requirement applicable to contributions, which requires itemization of any contribution of more than \$100. However, under Minn. Stat. § 10A.27, subd. 15, if The Requester uses \$5,000 or more of its general treasury money for expenditures to promote or defeat a ballot question, it must file a statement of underlying sources with its political fund report.

A statement of underlying sources may result in itemization of donors, but at a \$1,000-or-more threshold rather than at the more-than-\$100 threshold applicable to contributions.

Question Two

Practically, what must The Requester do when it transfers funds from its general treasury to its political fund? Is the record of the allocation of donors of less than \$1,000 maintained solely by The Requester 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, are there circumstances when the Board would seek to obtain the allocation ledger? If the ledger must be provided to the Board, is there any protection for the disclosure of underlying source(s) of 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, Minn. Stat. § 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.

Minnesota Statutes section 10A.27, subdivision 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 specific donors 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 The Requester 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 filed with the Board.

In the event of a Board investigation related to the activities of an association to promote a ballot question in Minnesota, 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 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.

Question Three

If The Requester wishes to contribute to a registered ballot question political committee, must those contributions be made from The Requester's political fund, or can The Requester contribute to a ballot question political committee directly from its general treasury funds? Do the reporting and disclosure requirements change based on the source of the contribution?

Opinion

Because The Requester will have registered a ballot question political fund with the Board, it may make contributions to registered ballot question political committees by allocating general treasury funds to its own political fund and then making a contribution to the recipient ballot question political committee that will be reported through The Requester's political fund account.

In the alternative, The Requester may make contributions to a registered ballot question political

committee directly using its general treasury funds. In either case, the underlying source disclosure requirements of Minn. Stat. § 10A.27, subd. 15, apply. In the case of the allocation to The Requester's own political fund account, The Requester 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 a registered ballot question political committee, The Requester would create an underlying source disclosure statement and provide it to the recipient ballot question political committee for filing with the recipient's next report.

If the Requester donates directly to a registered ballot question political committee, the recipient political committee will report the contribution received from the Requester, along with any required underlying source disclosure. The Requester Political Fund will have no reporting obligation with respect to the transaction.

If the Requester donates to a ballot question political committee by first allocating general treasury funds to the Requester political fund, then the Requester political fund will report the allocation to it of The Requester general treasury funds, along with any required underlying source disclosure. The Requester political fund will also report the contribution to the recipient ballot question political committee. The recipient political committee will report the receipt of a contribution from the Requester 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.

Question Four

If The Requester writes in its regular publications such as its newsletter, or on its website, or in other educational materials regarding the importance of the Minnesota ballot question, may The Requester pay such costs as part of its normal program budget or must those costs all be paid by the 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 The Requester's political fund report.

Question Five

If, in a solicitation, The Requester references the Minnesota ballot question as one of the projects in which it is involved, are all resulting contributions to The Requester over \$100 subject to reporting to the Board by virtue of such references, even if not solicited specifically for the purpose 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 The Requester rather than to "contributions" as the word is defined in Chapter 10A. This is not to say, of course, that donations to The Requester 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 is the question 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 question 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 May 1, 2012

Greg McCullough, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes

10A.01 DEFINITIONS

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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.

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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

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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.

Draft - not adopted by Board