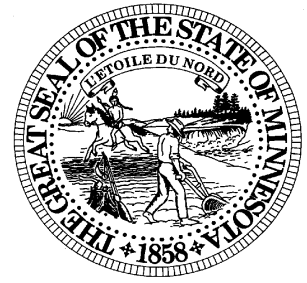


Minnesota

Campaign Finance and Public Disclosure Board



Guidance related to Chapter 10A compliance for associations engaging in activities to promote or defeat a ballot question

Campaign Finance and Public Disclosure Board Statement of Guidance Related to Ballot Question Disclosure Compilation as of January 19, 2012

General statements

This guidance is an expression of the Board's general intention. This guidance will be considered by the Executive Director unless circumstances demonstrate its application to be inappropriate. This guidance does not have, and is not intended to have, the effect of law. Therefore, this guidance does not impose any requirement or standard on individuals, associations, or political committees or funds. The investigation by the Board of any complaint related to the subjects of this guidance will be based on the relevant statutes. However, in the event of such an investigation, an association may rely on this guidance to the extent that it supports the association's position.

In the case of a Board investigation based on a complaint Board action, this guidance may provide the starting point for deliberation but the final determination will be based on the Board's independent interpretation of the relevant statutes and determination of the facts of the matter.

Chapter 10A, known as the Campaign Finance and Public Disclosure Act, provides a comprehensive system of disclosure of money used to influence state elections in Minnesota.

The Board believes that in enacting Chapter 10A, the Minnesota Legislature intended to create a disclosure system that provided the highest level of disclosure of the use of money for political purposes as is constitutionally permitted.

The Board believes that one important purpose of Chapter 10A is to provide voters with information that will help them make decisions in the political marketplace.

The Legislature has entrusted to the Board the responsibility of interpreting and administering Chapter 10A so as to carry out the Legislature's intent.

1. Enforcement of registration and reporting requirements for ballot question political committees and funds.

Registration: The Board will take no action and impose no late filing fee or civil penalty if a political committee or fund that exists to promote or defeat a ballot question registers with the Board no later than 14 days after the committee or fund has made contributions, received contributions, or made expenditures in excess of \$5,000, or by the end of the next business day after it has received a loan or contribution that must be reported under section 10A.20, subdivision 5, whichever is earlier.

Reporting: The treasurer of a ballot question political committee or fund must begin to file the reports required by Section 10A.20 in the first year it is required to register with the Board.

Individual: The Board will take no action and impose no late filing fee or civil penalty if an individual who uses personal funds to make expenditures to promote or defeat a ballot question files the report required by Section 10A.20, subdivision 6, when the total of the expenditures exceeds \$5,000.

2. Guidance on the definition of ballot question expenditure

(A) An expenditure to promote or defeat a ballot question (a ballot question expenditure) is an expenditure:

(a) that expressly advocates the adoption or defeat of a ballot question measure, or

(b) that is susceptible of no reasonable interpretation other than as an appeal to vote for or against a ballot question measure.

(B) A communication is presumed to be a communication to promote or defeat a ballot question if it (1) mentions the issue that is the subject of the ballot question; (2) states a position on that issue; and (3) mentions the ballot question that addresses the issue, mentions voting on the issue, or otherwise indicates that people will be able to vote on the issue.

(C) A communication that discusses an issue that is the subject of a ballot question but does not mention the ballot question that addresses the issue; does not mention voting on the issue; and otherwise does not indicate that people will be able to vote on the issue is presumed to be excluded from the definition of ballot question expenditure under Chapter 10A.

3. Guidance on the classification of a transfer of money received by an association as a "contribution" or a "general donation"

Statutory definition of "contribution"

A "contribution" is "money, a negotiable instrument, or a donation in-kind that is given to a political committee, political fund, principal campaign committee, or party unit." Minnesota Statutes Section 10A.01, subd. 11.

Statutory definition of "political fund"

A "political fund" is "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."

Minnesota Statutes Section 10A.01, subd. 28.

A political fund is an accumulation of an association's money tracked by some accounting mechanism. It is not a separate association or legal entity.

General donation

A "general donation" is money given to a non-major-purpose association that does not constitute a "contribution" under Chapter 10A and is not restricted by the donor as to its use. General donations may be referred to by the recipient as "membership dues" "fees" "contributions", "donations", or similar terms. Whether money received by a non-major-purpose association is a "general donation" or a "contribution" is not determined by the words the recipient uses to describe it, but by the purpose for which the money was given, as determined by the criteria set forth in this Guidance.

General treasury money

An association's "general treasury money" is all of the money received by the association in the form of general donations.

Contributions

(A) 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.

(B) 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.

(C) Money given in response to a solicitation that is the functional equivalent of an express request.

(1) Money given in response to a solicitation that meets all of the following criteria is a contribution:

- i) 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;
- ii) The solicitation clearly identifies the subject ballot question; and
- iii) 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.

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

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

(D) Money solicited in the name of an association's political fund

Some associations choose to establish a more formal structure than is required for their political fund accounts. They may set up bank accounts separate from those used for the association's general treasury money. They may solicit money under the name of the political fund as if the fund were, itself, an entity separate from the association. Money given in response to solicitations that ask for money in the name of the political fund itself are contributions.

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.

4. Guidance on the level of proof and range of threats that would require or permit the Board to exempt an individual from disclosure of a contribution to a ballot question political committee or fund.

When considering requests for waivers of disclosure requirements, the Board will apply both the statutory requirements of Chapter 10A and such constitutional requirements as have been clearly articulated by the U.S. Supreme Court. Staff is directed to conduct further research and make recommendations for language that the Board may consider for the adoption of a statement of policy.

5. Requirements for disclosure of underlying sources when an association not registered with the Board contributes or transfers general treasury money to a registered political committee or fund that limits its activities to those to promote or defeat a ballot question.

(A) An independent expenditure political committee or fund is a political committee or fund that makes only independent expenditures and those types of disbursements permitted under Section 10A.121, subd. 1, which include expenditures to promote or defeat a ballot question. An independent expenditure political committee or fund is not required under Chapter 10A to make independent expenditures. It may limit its activities to those described in Section 10A.121,

(B) A political committee or an association maintaining a political fund that intends to limit its political activities to promoting or defeating a ballot question may operate as an independent expenditure political committee or fund organized for ballot question purposes. In that case, it may accept contributions from associations not registered with the Board subject to the underlying source disclosure requirements of 10A.27, subds. 14 and 15, rather than the requirements of sections 10A.12, subd. 5, or 10A.27, subd. 13.

(C) A political committee or fund registered under paragraph (B), above, must also comply with the requirements of Section 10A.27, subd. 16, which requires the treasurer to file statements of underlying disclosure with the Board.

(D) Unregistered associations are cautioned that underlying source disclosure under Sections 10A.27, subds. 14 and 15, is available only for transfers of revenue from the operation of a business, membership dues or fees, and general contributions received by the unregistered association. An association that is not a political committee and that accepts contributions for the purpose of promoting or defeating a ballot question is required to register its own political fund to accommodate disclosure of those contributions, subject to registration thresholds.

(E) Section 10A.27, subd. 15, provides three methods for determining whether an underlying source of general treasury money contributed or transferred to a registered political committee or fund must be itemized. The method that will result in the association being able to transfer the highest amount of money with the least itemized disclosure is provided in Section 10A.27, subd. 15(b)(2). Under that option, the association may allocate to its contribution or transfer the first \$999.99 of the total donations and membership dues or fees received from an individual or association by the donor association. Donors whose allocation to the contribution or transfer does not exceed this amount need not be itemized.

6. Separate Depositories Not Required for Political Funds

Chapter 10A does not include a requirement that an association other than a political committee, principal campaign committee, or party unit maintain a separate depository as a condition of raising or spending money to influence the nomination or election of candidates or to promote or defeat a ballot question.

The Board will not enforce Rule 4503.0200, subp. 6, as it relates to associations that are not political committees, principal campaign committees, or party units.

It is not "commingling" for an association that is not a political committee, principal campaign committee, or party unit to keep money raised or spent to influence the nomination or election of candidates or to promote or defeat a ballot question in the same depository it uses for its general treasury money, provided that the association maintains an accounting mechanism which separately accounts for the money that constitutes the association's political fund from the general treasury money of the association.