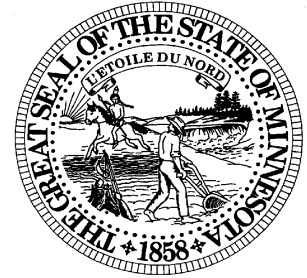


Minnesota

Campaign Finance and Public Disclosure Board



October 4, 2011

Statement of Guidance

Providing guidance to Board staff in implementing the determination of "contribution" under Chapter 10A as applied to associations making expenditures to promote or defeat a ballot question.

"Contributions" received by an association must be reported regardless of whether (a) the association is a political committee, party unit, or principal campaign committee; or (b) the association reports on its political activity through a political fund account.

This Guidance is to provide Board staff with information to enable them to advise associations regarding registration and reporting requirements related to or triggered by the acceptance of "contributions" as defined in Chapter 10A for the purpose of ballot questions.

This Guidance does not expand, limit, or otherwise affect the application of Chapter 10A. Rather, its purpose is to recognize certain definitions and enforcement positions that staff and others may rely on when applying registration and reporting requirements. The Board's Executive Director must consider this Guidance when advising interested persons and when determining whether to bring a matter to the Board for investigation or other action.

This Guidance is designed to provide a safe harbor. Therefore, the policies and definitions provided in this Guidance may be more narrowly tailored than a definition that the Board might adopt in an administrative rulemaking procedure. However, in the absence of a completed administrative rulemaking procedure or legislative action, the Board intends to apply these definitions and policies in its application of Chapter 10A as it relates to ballot questions that will be on the 2012 general election ballot.

Definitions.

The following definitions apply to the specified terms as they are used in this Guidance and in application of this Guidance by Board staff.

Association

An association is a group of two or more persons, who are not all members of an immediate family, acting in concert. The term "association" includes corporations and other legal forms of existence such as partnerships, as well as groups of people without a formal legal structure.

Non-major-purpose association

An association that has as its major purpose something other than to influence the nomination or election of candidates or to promote or defeat a ballot question is referred to as a "non-major-purpose association." Any association that is not a political

committee, party unit, or principal campaign committee, as those terms are defined in Chapter 10A, is a non-major-purpose association.

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.

Scope and purpose of Guidance

A non-major-purpose association that engages in expenditures to promote or defeat a ballot question is not a political committee. It is required to report on only that pool of its money that constitutes its political fund. For these associations it is important to understand whether money received is a "contribution" that is reportable through the political fund accounting mechanism or whether it is a general donation, which is subject to more limited disclosure and then only if the money was actually used to make ballot question expenditures.

This Guidance is limited to providing guidance to assist in determining when money received from individuals or other associations by a non-major-purpose association engaging in expenditures to promote or defeat a ballot question falls within the Chapter 10A definition of a contribution.

Disclosure related to a non-major-purpose association using its general treasury money to promote or defeat a ballot question is controlled by other provisions of Chapter 10A as more fully described in the Statement of Guidance issued by the Board at its meeting of June 30, 2011, and is not within the scope of this Guidance. Also not within the scope of this Guidance are issues related to associations engaging in other potentially regulated transactions such as making independent expenditures or making contributions to candidates or associations registered with the Board.

Considering the definitions included in Section 10A.01, subds. 11 and 28 together, and excluding the case of expending general treasury money to promote or defeat a ballot question, the definition of "contribution" in the context of a non-major-purpose association making expenditures to promote or defeat a ballot question may be restated as follows:

A contribution is money given to an association for the purpose of promoting or defeating a ballot question.

This Statement of Guidance is adopted to clarify when money given to an association is considered to be for the purpose of promoting or defeating a ballot question.

Classification of a transfer of money as a "contribution" or a "general donation".

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.

(This statement replaces the corresponding statement adopted by the Board in its preliminary guidance issued June 30, 2011.)

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 including an implied 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.

4. 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.