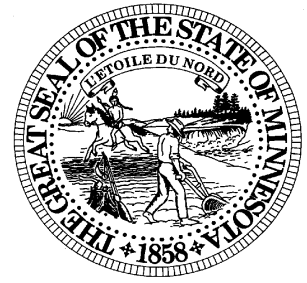


Minnesota

Campaign Finance and Public Disclosure Board



Date: December 18, 2009

To: Interested persons

From: Gary Goldsmith, Executive Director

Telephone: 651-296-1721

Re: Rulemaking Topics under consideration by the Board

The following rulemaking topics are under consideration by the Campaign Finance and Public Disclosure Board for inclusion in the Board's 2009 rulemaking procedure.

The fact that a topic is on this list does not ensure that the Board will proceed to rulemaking on that topic. Topics may be added as the rulemaking procedure progresses, based on comments of interested persons or additional needs identified by the Board.

10A.01, subd. 4 and 18. Approved and Independent Expenditures.

An independent expenditure is an expenditure made without the express or implied consent of a principal campaign committee. Statutory language lists a number of interactions between a committee's agent and a donor that would preclude an expenditure from being an independent expenditure.

Candidates may receive communications from potential donors offering help that, for one reason or another, the committee cannot accept as a contribution. A conversation in which the committee's agent gives implied consent to the expenditure will convert a potential independent expenditure into an approved expenditure.

The Board will examine whether a rule can be devised that would clarify what conduct will convert an otherwise independent expenditure into an approved expenditure. During rule development, the Board will consider whether it is possible to adopt a rule that will describe actions that would create a safe haven when a principal campaign committee receives an unsolicited communication about a potential independent expenditure.

10A.01, subd. 27 and 28. Political Committees and Political Funds. The Board will consider adopting rules describing requirements for a federally registered committee that wishes to register and participate in Minnesota. A number of advisory opinions have addressed the subject recently including #405. The question comes up multiple times each year. The rules will describe the steps a federally registered political committee must take to do business in Minnesota without violating Chapter 10A. The rules will also likely describe actions by a federal committee that would be prohibited for a Minnesota registered entity.

10A.02, subd 10. Audits and Investigations and Subd. 11, Violations, enforcement. The Board will develop rules that explain how the Board's audit and investigations work. The Board engages in several levels of investigative activity ranging from inquiries resulting from violations disclosed in reports filed with the Board to the investigation of formal complaints. Each inquiry the Board engages in is a form of investigation. However, the approach is different when the

violation is disclosed on a report filed by the violator than it is in the case of a formal complaint investigation.

Section 10A.02 and Minnesota case law require forms of notice before or during the investigative process. Case law and statutes also require giving specific notice before a Board client is required to provide information.

Rules relating to the investigative process will help the Board recognize and meet its notice and other due process requirements and will inform affected individuals and associations as to how the Board proceeds with regard to each type of investigation. The result is intended to be a better informed Board clientele and more fair and consistent investigative and enforcement procedures.

10A.02, subd 11. Violations; enforcement. This section indicates that until after findings are made or a conciliation agreement is signed, proceedings and the investigation are confidential. There is strong implication in the language that after findings are made, the investigation record may be opened. This has been the Board's practice. Administrative rules clarifying the Board's interpretation of the confidentiality provisions will be proposed to codify the Board's longstanding interpretation.

10A.02, subd 11. Violations; enforcement; Rule 4505.0200, Subp. 5, confidentiality. Pursuant to §10A.02, subd. 11, a hearing or action of the Board concerning a complaint is confidential until findings concerning probable cause are made. The minutes and tape recording of such a meeting are never made public. The Board will propose a rule to clarify what documents or testimony taken during an executive session of the Board may be made public after findings have been issued. Votes and discussions of the Board are never made public. However, during a hearing, sworn testimony may be taken. This rule will address whether such testimony or evidence introduced during a Board hearing will be released as part of the public record of the investigation after findings are made.

Minn. Rules, Part 4525 – Related to investigations.

The current rules related to investigations will be reviewed completely. This part of Minnesota Rules has been revised repeatedly over its lifetime, resulting in a disjointed part that no longer provides clear guidance as to the rights of a person or entity affected by it. In particular, the definition of "Contested Case" and the right and mechanism for initiating a contested case hearing are unclear. In a dispute between the Board and a client, the Office of Administrative Hearings reached an interpretation of this Part that was inconsistent with the Board's interpretation of its own rule. This part will be revised to clarify the rights of affected individuals and the methods available for invoking those rights.

Minn. Rules, Part 4501.0500 – Filings. This Part, along with associated definitions, will be thoroughly reviewed, particularly in view of the potential for mandatory electronic filing now being considered by the legislature. At a minimum, the filing date for facsimile filings will be changed so that the filing is timely if the transmission is received anytime on the due date. This change will reflect current Board practice and make the rule more consistent with statutory language.

Commingling

10A. 11, subd. 5 (Political parties, principal campaign committees, political committees) "may not commingle its funds with personal funds of officers, members, or associates of the committee"

10A.12, subd. 2 (political funds) "contents of a political fund may not be commingled with other funds or with the personal funds of an officer or member of the fund."

Both of the above anti-commingling statutes include general language prohibiting mixing of regulated funds with other funds. This broad language appears inclusive enough, when considered in the context of the assumed purposes of an anti-commingling statute, to mean that a registered entity's funds may not be commingled with **any** other money not owned and controlled by the registered entity.

The Board will propose rules clarifying the scope of the anti-commingling prohibitions.

10A.02, Board to prescribe forms. The Board has the authority to prescribe report forms. Statutes require contributors to be listed alphabetically, but are silent on the listing order for entities reported on other schedules. It has been a longstanding policy of the Board that itemized transactions included on reports must be reported in alphabetical order; by last name if the entity is an individual. This assists the Board and the Public in finding information on reports. The Board will propose a rule relating to the alphabetization of transactions disclosed on schedules.

Anonymous contributions. The Board has consistently taken the position that a contribution of more than \$100 for which the recipient committee does not provide the donor's complete name, address, and employment information is an anonymous contribution. After giving a committee significant time to provide the missing information, the Board eventually requires such contributions to be forwarded to the state under the statutory provisions governing anonymous contributions. The Board will consider an administrative rule to codify this interpretation of statutory requirements.

10A.25, Subd 2(d) Expenditure limit increased. The campaign expenditure limit for a candidate is increased by 10% for a person who is "running for that office for the first time and has not previously run for office" in specified geographic areas. The Board has considered in several advisory opinions what it means to "run for office" in the context of deciding whether actions of an individual in a past election cycle preclude the spending limit in the current cycle. The Board will consider whether the conclusions reached in its advisory opinions should be enacted into an administrative rule.

10A.27 Contribution Limits. Special source limits apply to the base spending limit for the office and are not dependent on the candidate signing a Public Subsidy Agreement. This Board policy, applied over many years, has significant statutory support, but is not been codified in an administrative rule. The Board will propose a rule clarifying this statutory requirement.

10A.27, subd 13. Unregistered Associations. The Board will consider a rule permitting the statement that must accompany a contribution from an unregistered association to be received by the association within 60 days of the deposit of the subject contribution and still be timely. This rule would be based on the fact that the recipient can return the subject contribution within 60 days of its deposit without penalty; so allowing a recipient to correct the disclosure problem within that time is merely a substitute for returning the contribution only to receive it back with the required disclosure.

10A.322 and 10A.323 Filing Public Subsidy Agreement and Affidavit of Contributions
The Board will adopt a rule clarifying that the Board does not have statutory authority to extend or waive the filing date requirements of these statutes and that failure to file by the due date under either statute disqualifies the late filer from the right to receive public subsidy payments.

Receipt date for contributions. The Board may consider rules defining when a contribution is "received" if the contribution is processed through an electronic online contribution service or

website or through a service such as PayPal. Receipt date of a contribution is important because contributions must be deposited within a specified time after receipt. Receipt date is also important for determining in which year a receipt should be reported and whether a receipt is received during the legislative session.

Reporting processing fees for online transactions. Online fundraising transactions may occur frequently and each may have individual fees associated with it. The board will consider rules to establish a time period, such as one month, for the aggregation of processing fees for reporting purposes so that a reporter is not required to record a fee payment transaction every time an online contribution is received.

Valuation of online services. Board staff regularly receives requests for advice on how to value electronic services such as the publication of a campaign advertisement in an online-only newsletter; use of email lists or of email services, the inclusion of information on web pages, and similar transactions. While statutes require application of a “fair market value” standard, the principles and factors to be used in establishing a value for electronic services are not clear.

The Board will evaluate and may propose administrative rules to provide standards for the valuation of electronic services.

Year-end expenditures; prepayments

A campaign expenditure is made in the year in which the obligation is incurred. The Board has found that principal campaign committees with available funds would like to make campaign expenditures at the end of a non-election year so as to use their full non-election year expenditure limit. However, in some cases the committee does not desire to take delivery of the goods or services being purchased. The question arises as to whether the expenditure is actually incurred in the non-election year, or is simply a deposit toward expenditures that are expected to take place in the election year.

The Board will consider administrative rules to assist principal campaign committees in determining when an obligation is incurred within the meaning of the statute.