

Issued to:

Harley M. Ogata, Staff Attorney
Minnesota Education Association
41 Sherburne Avenue
St. Paul, MN 55103-2196

RE: *Campaign Finance Disclosure*

ADVISORY OPINION #114

SUMMARY

114. A political fund established by an association that screens and endorses candidates or by any local of that association may make cash contributions to the association's endorsed candidates as well as independent expenditures on behalf of the association's endorsed candidates provided the independent expenditures comport with the statutes governing independent expenditures set forth in Minn. Stat. §§ 10A.01, subd. 10b, 10A.12, 10A.14, 10A.17, and 10A.20.

FACTS

You state that you are writing on behalf of the Minnesota Education Association ("MEA") and IMPACE-MEA, its registered political fund to request an advisory opinion pursuant to Minn. Stat. § 10A.02, subd. 12, to provide guidance to the MEA and IMPACE-MEA regarding their conduct during the forthcoming election year.

You further state that the MEA is an unincorporated association with approximately 47,000 members in Minnesota most of whom are public school teachers. You state that the MEA through IMPACE-MEA intends to endorse candidates for virtually all state offices in Minnesota that will be on the ballot in 1992, after screening candidates to determine their positions on issues of importance to the MEA and its membership. You further state that IMPACE-MEA also intends to make cash contributions to the principal campaign committees of all endorsed candidates.

You state that communication with its membership is essential to the MEA and that the ability to communicate with its membership concerning issues of common concern, including political issues, is essential to the MEA's existence. You state that during the school year the MEA publishes a monthly newsletter that is distributed to its membership. You further state that during the forthcoming election year the MEA intends to report in its newsletter as a news item the results of the IMPACE-MEA endorsing convention that will occur in the summer. You state that in 1992 the MEA plans to focus on election issues in a regular edition of its newsletter to be published shortly before the election and to urge the membership to vote for named endorsed candidates.

You further state that IMPACE-MEA intends to produce brochures and leaflets regarding endorsed candidates and to distribute them to the MEA's membership without any authorization, consent, or cooperation from the

candidates.

You state that the MEA's locals are truly independent of the state organization and that they have their own budgets not subject to the control of the MEA or IMPACE-MEA. You further state that MEA's locals have full authority to communicate with their members on political and other issues and to support candidates of their choice.

You state that the questions you ask the Board concern primarily what, if anything, Chapter 10A requires of the MEA, its locals, or IMPACE-MEA regarding the allocation and reporting to the Board of expenses incurred in making partisan communications to MEA members and whether the MEA, its locals, or IMPACE-MEA can make independent expenditures on behalf of endorsed candidates.

You ask the Board the following questions:

QUESTION ONE

Must the MEA obtain written authorization under Minn. Stat. § 10A.17, subd. 2, from the treasurers of principal campaign committees of endorsed candidates before it can report in its newsletter the results of the IMPACE-MEA endorsing convention, assuming that the report will be made without the authorization, consent, or cooperation of any candidate? That is, can the cost of printing that portion of the MEA's regular newsletter be an independent expenditure, with the appropriate disclaimer?

OPINION

If the Minnesota Education Association (MEA) newsletter report of the results of IMPACE-MEA's endorsing convention is made without the authorization, consent, or cooperation of any candidate, in accordance with the provisions of Minn. Stat. § 10A.01, subd. 10b, and the disclosure requirements of Minn. Stat. § 10A.17, subd. 4, the cost would be an independent expenditure. Because the MEA is the supporting association identified on IMPACE-MEA's registration as a political fund, IMPACE-MEA must report the costs of the MEA independent expenditures as provided in Minn. Stat. § 10A.20 (1990).

Minn. Stat. § 10A.17, subd. 2, applies to an approved expenditure. Approved expenditure is an expenditure made with the authorization or expressed or implied consent of, or at the request or suggestion of that candidate or the candidate's agent. Minn. Stat. § 10A.01, subd. 10a. In contrast, an independent expenditure means an expenditure expressly advocating the election or defeat of a clearly identified candidate made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, any candidate or any candidate's principal campaign committee or agent. Minn. Stat. § 10A.01, subd. 10b (1990). An independent expenditure is not a contribution to that candidate. *Id.* If the expenditure is an independent expenditure, no written authorization from the candidate's treasurer is required.

QUESTION TWO

Can the cost of printing that portion of the MEA's regular pre-election issue of its newsletter that urges the membership to vote for candidates endorsed by IMPACE-MEA qualify as an independent expenditure, if there is

no authorization, consent, or cooperation from the endorsed candidates in connection with the publication of the issue?

OPINION

To the extent that the portion of the MEA's regular pre-election issue of its newsletter urging the membership to vote for IMPACE-MEA candidates is prepared and published in accordance with the provisions of Minn. Stat. § 10A.01, subd. 10b, and the disclosure requirements of Minn. Stat.

§ 10A.17, subd. 4, then the cost of printing and distributing the newsletter must be reported by IMPACE-MEA under the independent expenditure provisions of Minn. Stat. § 10A.20.

QUESTION THREE

If the costs of publication in the MEA's newsletter of information either reporting the endorsement of candidates by IMPACE-MEA or urging the election of candidates endorsed by IMPACE-MEA must be in the form of approved expenditures, and thereby contributions to the candidates named, and assuming that the costs exceed \$100, must the MEA itself register with the Board as a political committee or can IMPACE-MEA obtain the necessary written authorization from campaign committee treasurers, reimburse the MEA for the allocable portion of the newsletters and report the approved expenditures as contributions to the affected committees? If the MEA must register as a political committee, would its contributions be accumulated with those of IMPACE-MEA, subject to a single contribution limitation? Could the MEA establish more than one political fund with contribution limits separate from those of IMPACE-MEA? If the publication costs can be independent expenditures, and they exceed \$100, by whom are they reported?

OPINION

No individual or association may make an approved expenditure of more than \$20 without receiving written authorization as to the amount that may be spent and the purpose of the expenditure from the treasurer of the principal campaign committee of the candidate who approved the expenditure. Minn. Stat. § 10A.17, subd. 2 (1990). An approved expenditure may take the form of a donation in kind which is defined as anything of value other than money or negotiable instruments given by an individual or association to a principal campaign committee for the purpose of influencing the nomination or election of a candidate. Minn. Stat. § 10A.01, subd. 7b (1990).

It is the opinion of the Board that because IMPACE-MEA, a political fund, lists the MEA as its supporting association on its registration as filed with the Board, the MEA in essence has established and registered a political fund in accordance with Minn. Stat. §§ 10A.12 and 10A.14. If MEA decides to seek authorization of its expenditures on behalf of candidates, IMPACE-MEA could proceed to obtain the written approvals specified in Minn. Stat. § 10A.17, subd. 2, and report the costs of the allocable portions of the newsletters as approved expenditures to the affected candidates in accordance with Minn. Stat. §§ 10A.20 and 10A.22, subd. 5 (1990).

The Board cautions that the provisions of Minn. Stat. § 10A.29 may apply to the establishment of more than one of political fund by an association

if, for example, the proliferation of political funds is an attempt to circumvent the provisions of Chapter 10A by redirecting funds through or contributing funds on behalf of another association.

QUESTION FOUR

Can IMPACE-MEA make independent expenditures on behalf of endorsed candidates in the form of brochures and leaflets distributed to the MEA's membership promoting the election of endorsed candidates to whom IMPACE-MEA has made cash contributions, assuming that the publication of such brochures and leaflets is done without the authorization, consent, or cooperation of the candidates? For example, IMPACE-MEA would not ask the candidate or his or her committee for a photograph or any other information to be used in such brochures or leaflets.

OPINION

Yes. IMPACE-MEA may make independent expenditures on behalf of endorsed candidates in the form of brochures and leaflets distributed to the MEA's membership promoting the election of endorsed candidates to whom IMPACE-MEA has made cash contributions, provided that the publication of such brochures and leaflets is done without the authorization, consent, or cooperation of the candidates.

QUESTION FIVE

Can MEA locals make independent expenditures on behalf of candidates endorsed by IMPACE-MEA in the form of communications to their members urging the election of such candidates? If the Board response is that as a matter of law if such expenditures are made, they can be made only in the form of approved expenditures, should each local that spends more than \$100 on such communications register a political fund with the Board? Must such contributions be accumulated with contributions made by the MEA or IMPACE-MEA and reported by the MEA or IMPACE-MEA? If such independent expenditures can be made by a local, and they exceed \$100, must the local register a political fund to report them?

OPINION

If MEA locals operate independently from the Minnesota Education Association, each local that makes approved expenditures or independent expenditures or both totaling more than \$100 must register with the Board a political fund, make the expenditures from that fund, and file periodic reports of the fund's receipts and expenditures. Minn. Stat. §§ 10A.12, 10A.14, and 10A.20. It is the opinion of the Board that the Ethics in Government Act does not require candidates to aggregate the contributions from separate political funds when determining the application of contribution limits. However, the Act requires a candidate to aggregate contributions from a political party and to aggregate the contributions received from another candidate's principal campaign committee or any other committee bearing the contribution candidate's name or title or otherwise authorized by the contributing candidate for purposes of compliance with the applicable contribution limit. Minn. Stat. § 10A.27, subd. 9 (1990).

QUESTION SIX

You state that the MEA and IMPACE-MEA have particular concern about the views expressed in Advisory Opinion No. 63 that was issued by the Board on August 1, 1980. You state that the referenced opinion concluded that a candidate's appearance at a pre-endorsement interview should not be construed as a request or suggestion [by that candidate] that the endorsing organization make an expenditure on behalf of the candidate. You further state that the referenced opinion also concluded that the candidate's appearance "set in motion" the application of the disclosure and allocation provisions of Minn. Stat. § 10A.17, subd. 2., if and when the endorsing organization decided to prepare and distribute a sample ballot on behalf of candidates. You have asked the Board to reconsider the foregoing conclusions and to tell the MEA and IMPACE-MEA whether the Board still views this advice to be valid.

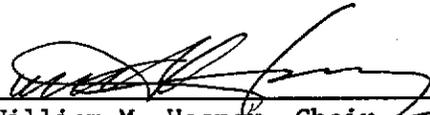
OPINION

A candidate's appearance at a pre-endorsement interview should not be construed as a request or suggestion by that candidate to the endorsing association for the association to make an expenditure on behalf of the candidate.

If the registered political fund established by the endorsing association decides to make an independent expenditure on behalf of that candidate, the fund must follow the disclosure requirements of Minn. Stat. § 10A.17, subd. 4 (1990). The cited provision does not require the approval by or the allocation of costs to the candidate because an independent expenditure is not a contribution to a candidate. Minn. Stat. § 10A.01, subd. 10b (1990).

Inasmuch as the foregoing opinion may conflict with certain views expressed by the Board in Advisory Opinion No. 63, the interpretation of Ch. 10A herein stated supersedes the previous opinion. The Board notes that in accordance with Minn. Stat. § 10A.02, subd. 12, as amended in 1978, Advisory Opinion No. 63 lapsed when the legislature adjourned in 1982. Moreover, during the period while the stated opinion was in effect, the opinion applied only to the association requesting the opinion and only to the facts as stated in the association's advisory opinion request.

Issued: 9 September 1991



William M. Heaney, Chair
Ethical Practices Board