

**ETHICAL PRACTICES BOARD**

**First Floor South, Centennial Building . 658 Cedar Street . St. Paul, MN 55155-1603**

Issued to:

Bob Krogman, Executive Director  
Minnesota Petroleum Marketers Association  
2345 Rice Street, Suite 173  
St. Paul, MN 55113

**RE: Contribution Plan**

**AMENDED ADVISORY OPINION #146**

**SUMMARY**

146. If permitted by Minn. Stat. § 211B.15, a statute that is not within the jurisdiction of the Ethical Practices Board, a contribution by the Northwest Petroleum Association of more than \$100 to the Northwest Petroleum Political Action Committee must be accompanied by a statement that meets the disclosure and reporting period requirements of Minn. Stat. § 10A.20. See Minn. Stat. § 10A.22, subd. 7 (1992).

**FACTS**

As executive director of the Northwest Petroleum Association, doing business as the Minnesota Petroleum Marketers Association, you ask the Ethical Practices Board for an advisory opinion based upon your statement of the following facts:

1. Membership dues of some Northwest Petroleum Association members are paid by check from individual proprietors and other dues are paid by check from corporate members and partnerships.
2. Annual convention registrations and purchases of various tickets for convention events are paid by check and cash from sole proprietors, corporations, partnerships, and individuals who are employees of Northwest Petroleum Association members.
3. Minn. Stat. § 10A.12, subd. 5, provides that an association may deposit in its political action fund money derived from dues or membership fees.
4. Northwest Petroleum Association is aware of the 1982 Minnesota supreme court case Minnesota Association of Commerce and Industry v. Foley in which the Court held that the statute prohibiting corporate political activity does not apply to nonprofit corporations.
5. Northwest Petroleum Association is a nonprofit trade association.

6. Based on Minn. Stat. § 10A.12, subd. 5, and the Supreme Court case cited above Northwest Petroleum Association is considering a contribution of surplus funds from dues and convention activities to the Northwest Petroleum Political Action Committee, a political committee registered with the Ethical Practices Board as #4-0069.

### QUESTION

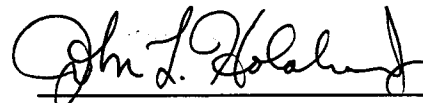
May the Northwest Petroleum Association contribute surplus funds from its dues and convention activities to the Northwest Petroleum Political Action Committee?

### OPINION

The Board believes that the question posed by the Northwest Petroleum Association ("the Association") may be controlled by the provisions of Minn. Stat. § 211B.15, a statute that is not within the Board's jurisdiction and with regard to which the Board may not issue advisory opinions. However, the Association should be aware that Minn. Stat. § 211B.15, the statute relating to corporate political activity, is no longer in the form in which it existed at the time of the decision of the Minnesota Supreme Court in *Minnesota Association of Commerce and Industry v. Foley*, 316 N.W.2d 525 (Minn.1982). Amendments made by the Legislature in 1993 particularly affect application of the statute to the activities of nonprofit corporations, and the Association should carefully consider the effect of Minn. Stat. § 211B.15 on the proposed use of the Association's surplus funds as a contribution to the Northwest Petroleum Political Action Committee.

If the Association is satisfied that both the fact of a contribution to the Northwest Petroleum Political Action Committee and the source of the funds with which the contribution will be made are permitted by Minn. Stat. § 211B.15, the implications of the Association's contribution under Minn. Stat. Ch. 10A are as follows: Pursuant to Minn. Stat. § 10A.22, subd. 7 (1922), if the Association makes a contribution of more than \$100 to the Northwest Petroleum Political Action Committee, the Association must register a political fund with the Ethical Practices Board or furnish to the Northwest Petroleum Political Action Committee a statement that meets the disclosure and reporting period requirements of Minn. Stat. § 10A.20. The statement must be certified as true and correct by an officer of the Association and must be covered by at least the 30 days immediately preceding and including the date on which the contribution was made. The treasurer of the Northwest Petroleum Political Action Committee must include a copy of the Association's certified statement with the Committee's periodic report to the Board that discloses the contribution.

Issued: Aug. 12, 1994



John L. Holahan, Jr., Chair  
Ethical Practices Board

## **PERTINENT STATUTES**

**Minn. Stat. § 10A.01 DEFINITIONS provides:**

...  
Subd. 3. "Association" means business, corporation, firm, partnership, committee, labor organization, club, or any other group of two or more persons, which includes more than an immediate family, acting in concert.

...  
Subd. 15. "Political committee" means any association as defined in subdivision 3 whose major purpose is to influence the nomination or election of a candidate or to promote or defeat a ballot question.

Subd. 16. "Political fund" means any accumulation of dues or voluntary contributions by an association other than a political committee, which accumulation is collected or expended for the purpose of influencing the nomination or election of a candidate or to promote or defeat a ballot question.

...

**Minn. Stat. § 10A.12 POLITICAL FUNDS provides:**

Subdivision 1. No association other than a political committee shall transfer more than \$100 in aggregate in any one year to candidates or political committees or make any approved or independent expenditure to promote or defeat a ballot question unless the transfer or expenditure is made from a political fund.

Subd. 2. The contents of a political fund shall not be commingled with any other funds or with the personal funds of any officer or member of the fund.

Subd. 3. Each association which has a political fund shall elect or appoint a treasurer of the political fund.

Subd. 4. No contributions to the political fund shall be accepted and no expenditures or transfers from the political fund shall be made while the office of treasurer of the political fund is vacant.

Subd. 5. Notwithstanding subdivision 1, any association may, if not prohibited by other law, deposit in its political fund money derived from dues or membership fees. Pursuant to section 10A.20, the treasurer of the fund shall disclose the name of any member whose dues, membership fees and contributions deposited in the political fund together exceed \$100 in any one year.

Subd. 6. Any person who knowingly violates the provisions of this section is guilty of a misdemeanor.

**Minn. Stat. § 10A.14 REGISTRATION OF POLITICAL COMMITTEES AND POLITICAL FUNDS provides:**

Subdivision 1. The treasurer of a political committee or political fund shall register with the Board by filing a statement of organization no later than 14 days after the date upon which the committee or fund has made a contribution, received contributions or made expenditures in

excess of \$100.

Subd. 2. The statement of organization shall include:

...

(b) the name and address of any supporting association of a political fund;

...

Minn. Stat. § 10A.22 REPORTS AND STATEMENTS provides:

...

Subd. 7. **Statement required; penalty.** (a) The treasurer of a political committee or political fund shall not accept a contribution of more than \$100 from an association not registered in this state unless the contribution is accompanied by a written statement which meets the disclosure and reporting period requirements imposed by section 10A.20. This statement shall be certified as true and correct by an officer of the contributing association. The political committee or political fund which accepts the contribution shall include a copy of the statement with the report which discloses the contribution to the Board. . . .

(b) An unregistered association may provide the written statement required by this subdivision to no more than three political committees or political funds in any calendar year. Each statement must cover at least the 30 days immediately preceding and including the date on which the contribution was made. An unregistered association or an officer of it is subject to a civil penalty up to \$1,000 if the association or its officer:

(1) fails to provide a written statement as required by this subdivision; or

(2) fails to register after giving the written statement required by this subdivision to more than three political committees or political funds in any calendar year.

An officer of an association who violates this paragraph is guilty of a misdemeanor.