

State of Minnesota  
Campaign Finance & Public Disclosure Board  
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**THE FOLLOWING PUBLICATION DOES NOT IDENTIFY THE REQUESTER  
OF THE ADVISORY OPINION, WHICH IS NON PUBLIC DATA**  
under Minn. Stat. § 10A.02, subd. 12(b)

**RE: Definition of political committees and funds, reporting requirements of lobbyists.**

**ADVISORY OPINION 334**

**SUMMARY**

The purpose of a communication determines if the communication is a campaign expenditure, a lobbying disbursement, or a communication outside of the application of Minnesota Statutes Chapter 10A.

**FACTS**

As the legal representative for an association, you ask the Campaign Finance and Public Disclosure Board (the Board) for an advisory opinion based on the following facts:

1. The association is a nonprofit corporation registered in Minnesota.
2. The association proposes to create voter guides and scorecards to inform the electorate of candidates' positions on particular topics. The cost of the materials would be paid for directly by the association.
3. The association proposes to make communications that will mention specific legislation, administrative action, or official action of a metropolitan governmental unit. The communication may or may not advocate the defeat or adoption of the legislation or action.
4. The association may spend more than \$500 to compensate lobbyist(s) for "issue advocacy" communications, and may spend more than \$50,000 in a calendar year on "issue advocacy" communications.

## ISSUE 1

Would the association's expenditures on "issue advocacy" be considered communications that influence the nomination or election of a candidate or promote or defeat a ballot question?

## OPINION

Minnesota Statutes do not define "issue advocacy", therefore the Board cannot offer guidance as to what communications may be categorized as issue advocacy. Further the Board cannot give an opinion relying on definitions of the term "issue advocacy" provided at other times, in other jurisdictions, and in reference to laws outside of Minnesota Statutes 10A. Undoubtedly there are many forms of communication (commercial, educational, etc.) that are not regulated by Minnesota Statutes Chapter 10A. However, if the **purpose** of the communication is to influence the nomination or election of a candidate for judge, the state legislature, a constitutional office, or effect a statewide ballot question, then the communication falls within the jurisdiction of Minnesota Statutes Chapter 10A. Such communications must be reported to the Board as campaign expenditures.

## ISSUE 2

If an organization produces and distributes communications that have the purpose of influencing the nomination or election of a candidate or to promote or defeat a ballot question, is the organization a campaign committee if the organization has as its major purpose tasks other than to produce said communications?

## OPINION

Minn. Stat. §10A.01, subd. 27, provides that an association whose "major purpose" is to influence the nomination or election of a candidate or to promote or defeat a ballot question is a political committee. An association (other than a political party unit or principal campaign committee) that does not meet this definition, but that makes aggregate contributions in excess of \$100, or that makes approved or independent expenditures to influence the nomination or election of a candidate or to promote or defeat a ballot question, must make the contributions or expenditures through the use of a political fund. A "political fund" is defined and regulated in Minn. Stat. §10A.01, subd. 28, and Minn. Stat §10A.12.

## ISSUE 3

Do "issue advocacy" communications on legislation, administrative action, or the official action of a metropolitan governmental unit constitute lobbying as defined in Minnesota Statutes Chapter 10A?

## OPINION

As stated in response to Issue 1, Minnesota Statutes do not define or rely on the term "issue advocacy". Therefore, the Board cannot provide advice to an organization as to what communications fall into the category of issue advocacy. Minn. Stat. §10A.01, subd. 21, provides that activities "for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials" constitute lobbying if they occur above specified thresholds of time or value. It is the responsibility of the lobbyist principal to determine the purpose of its expenditures, and report only those expenditures related to lobbying to the Board through the lobbying disbursement reports of the designated lobbyist, and the yearly lobbying disbursement report of the lobbyist principal.

## ISSUE 4

Will expenditures on "issue advocacy" communications related to legislation or administrative action, or the official action of a metropolitan governmental unit, make the association a lobbyist principal?

## OPINION

Any communication made by an association with the purpose of influencing legislation or administrative action, or the official action of a metropolitan governmental unit, or which urges others to communicate with public officials on the legislation or actions, must be reported to the Board as a lobbying expenditure. If the cost of lobbying communications is greater than \$50,000 in any calendar year the association responsible for the communications must report to the Board as a lobbyist principal. An association is also classified as a lobbyist principal if it spends more than \$500 in aggregate in a calendar year to compensate a lobbyist(s).

Issued 12/11/01

  
Douglas A. Kelley, Chair  
Campaign Finance and Public Disclosure Board

## Cited Statutes and Rules

### 10A.01 DEFINITIONS.

**Subd. 9. Campaign expenditure.** "Campaign expenditure" or "expenditure" means a purchase or payment of money or anything of value, or an advance of credit, made or incurred for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or defeating a ballot question.

An expenditure is considered to be made in the year in which the candidate made the purchase of goods or services or incurred an obligation to pay for goods or services.

An expenditure made for the purpose of defeating a candidate is considered made for the purpose of influencing the nomination or election of that candidate or any opponent of that candidate.

Except as provided in clause (1), "expenditure" includes the dollar value of a donation in kind.

"Expenditure" does not include:

(1) noncampaign disbursements as defined in subdivision 26;

(2) services provided without compensation by an individual volunteering personal time on behalf of a candidate, ballot question, political committee, political fund, principal campaign committee, or party unit; or

(3) the publishing or broadcasting of news items or editorial comments by the news media.

### **Subd. 21. Lobbyist.**

(a) "Lobbyist" means an individual:

(1) engaged for pay or other consideration, or authorized to spend money by another individual, association, political subdivision, or public higher education system, who spends more than five hours in any month or more than \$250, not including the individual's own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials; or

(2) who spends more than \$250, not including the individual's own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials.

(b) "Lobbyist" does not include:

(1) a public official;

(2) an employee of the state, including an employee of any of the public higher education systems;

(3) an elected local official;

(4) a nonelected local official or an employee of a political subdivision acting in an official capacity, unless the nonelected official or employee of a political subdivision spends more than 50 hours in any month attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit other than the political subdivision employing the official or employee, by communicating or urging others to communicate with public or local officials, including time spent monitoring legislative or administrative action, or the official action of a metropolitan governmental unit, and related research, analysis, and compilation and dissemination of information relating to legislative or administrative policy in this state, or to the policies of metropolitan governmental units;

(5) a party or the party's representative appearing in a proceeding before a state board, commission, or agency of the executive branch unless the board, commission, or agency is taking administrative action;

(6) an individual while engaged in selling goods or services to be paid for by public funds;

(7) news medium or its employees or agents while engaged in the publishing or broadcasting of news items, editorial comments, or paid advertisements which directly or indirectly urge official action;

(8) a paid expert witness whose testimony is requested by the body before which the witness is appearing, but only to the extent of preparing or delivering testimony; or

(9) a party or the party's representative appearing to present a claim to the legislature and communicating to legislators only by the filing of a claim form and supporting documents and by appearing at public hearings on the claim.

**Subd. 27. Political committee.** "Political committee" means an association whose major purpose is to influence the nomination or election of a candidate or to promote or defeat a ballot question, other than a principal campaign committee or a political party unit.

**Subd. 28. Political fund.** "Political fund" means 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.

**Subd. 33. Principal.** "Principal" means an individual or association that:

(1) spends more than \$500 in the aggregate in any calendar year to engage a lobbyist, compensate a lobbyist, or authorize the expenditure of money by a lobbyist; or

(2) is not included in clause (1) and spends a total of at least \$50,000 in any calendar year on efforts to influence legislative action, administrative action, or the official action of metropolitan governmental units, as described in section 10A.04, subdivision 6.

#### **10A.12 POLITICAL FUNDS.**

Subdivision 1. **When required.** An association other than a political committee or party unit may not contribute more than \$100 in aggregate in any one year to candidates, political committees, or party units or make any approved or independent expenditure or expenditure to promote or defeat a ballot question unless the contribution or expenditure is made from a political fund.

Subd. 2. **Commingling prohibited.** The 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.

Subd. 3. **Treasurer.** An association that has a political fund must elect or appoint a treasurer of the political fund.

Subd. 4. **Treasurer vacancy.** A political fund may not accept a contribution or make an expenditure or contribution from the political fund while the office of treasurer of the political fund is vacant.

Subd. 5. **Dues or membership fees.** An association may, if not prohibited by other law, deposit in its political fund money derived from dues or membership fees. Under section 10A.20, the treasurer of the fund must disclose the name of any member whose dues, membership fees, and contributions deposited in the political fund together exceed \$100 in a year.

Subd. 6. **Penalty.** A person who knowingly violates this section is guilty of a misdemeanor.