

State of Minnesota
Campaign Finance and Public Disclosure Board
Suite 190, Centennial Building. 658 Cedar Street. St. Paul, MN 55155-1603

**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: Collection of Contributions to Candidates Over the Internet

ADVISORY OPINION 369

SUMMARY

A political committee may serve as a vendor of Internet-based services to candidates. The cost of the Internet services provided by the committee must reflect the fair market value of equivalent services available to any candidate on the open market.

FACTS

As an officer of a Ballot Issue Committee (the Committee) registered with the Campaign Finance and Public Disclosure Board (the Board) you ask for an advisory opinion based on the following facts.

1. The Committee will offer, for a fee, to facilitate the collection of contributions to candidate's committees over the Internet.
2. If a candidate opts to use the service the Committee will add the candidate to a web page that will serve as an "electronic mailbox" into which individuals may contribute to a specific candidate.
3. A transaction fee will be deducted from the contribution amount prior to the contribution being transferred to the candidate's account.
4. The Committee will contract with a third party processing company to conduct the transfer of funds from the credit card of the contributor to the bank account of the candidate's committee.
5. The transaction time between when the contribution is received to when it is deposited in the candidate's account is anticipated to be a few seconds. The Committee will not be in control of the contributions to candidates other than to deduct the transaction fee prior to depositing the net proceeds in the candidate's account.

6. If the candidate has signed the Public Subsidy Agreement the Committee intends to generate an electronic version of the Political Contribution Refund (PCR) receipt that may be printed by the donor from the Internet and used to apply for the PCR from the state.
7. The Committee would number the electronic version of the PCR receipts based on paper PCR booklets obtained by the candidate from the Board. The electronic version of the PCR receipt would include an electronic candidate signature.
8. The Committee is aware of the issues described in Advisory Opinions 318 and 360, and believes that the service described in this set of facts is similar in concept to the situations described in those two advisory opinions.

ISSUE ONE

May the Committee contract with candidates to provide Internet-based collection and transfer of contributions?

OPINION ONE

Yes. As described the Committee is in effect becoming a vendor of Internet-based services to candidates who choose to participate. The fee deducted from the contribution by the Committee must be at least equivalent to the fair market value that any candidate would pay to acquire a similar service from a business. If the fee charged by the Committee is less than the fair market value of the service, the difference between the amounts is an in-kind contribution from the Committee to the candidate.

If the Committee accepts corporate contributions (~~Ballot Question Committees may accept corporate contributions, see Advisory Opinion 257 and 343~~)¹ the Committee will be prohibited from making cash or in-kind contributions to candidates. A contribution from a Ballot Question Committee that has accepted corporate contributions to a candidate violates the prohibition on corporate contributions found in Minn. Stat. §211B.15, subd. 2.²

The requestor notes similarities between the facts of this advisory opinion request and Advisory Opinions 318 and 360. As provided in those advisory opinions and reiterated here, the use of the Internet to collect contributions in no way lessens the record keeping and reporting responsibilities of the candidate's treasurer. The Internet service must provide the treasurer with the date of the contribution, the name and full address of the contributor, and if the contribution is over \$100, the employer or occupation of the

¹ On June 30, 2011, the Board revoked Advisory Opinions 257 and 343. The reference to these two advisory opinions is also revoked. However, this advisory opinion did not rely on Advisory Opinions 257 and 369 for its conclusions, and is therefore still representative of the Board's opinions.

² The authority for a Ballot Question Committee to accept a corporate contribution is provided in Minn. Stat. §211B.15, subd. 4. Footnote added August 10, 2011.

contributor. If the required disclosure information is not provided the contribution will need to either be returned to the contributor or forwarded to the Board for deposit in the state elections campaign fund.

The reported value of the contribution is the full amount donated by the contributor before the fee is deducted. The fee deducted by the Committee from the contribution is a campaign expenditure and must be reported by the candidate's committee on periodic reports to the Board.

The candidate's committee treasurer will be responsible to monitor Internet-based contributions and aggregate those contributions with any prior contributions from the individual to insure that contribution and aggregate special source limits are not exceeded. The treasurer will also need to consider Internet-based contributions when monitoring the need to submit a 48 Hour Notice of Large Contribution.

ISSUE TWO

May the Committee generate an electronic version of the PCR receipt for contributors who donate over the Internet?

OPINION TWO

The Department of Revenue administers the submission of PCR receipts as provided in Minn. Stat. §290.06, subd. 23. Although the Board may not offer an advisory opinion on a statutory provision outside of its jurisdiction, it may reference statutes that affect the administration of Chapter 10A. Section 290.06, subd. 23 provides, "A refund of a contribution is allowed only if the taxpayer files a form required by the commissioner and attaches to the form a copy of an official refund receipt form issued by the candidate or party and signed by the candidate, the treasurer of the candidate's principal campaign committee, or the chair or treasurer of the party unit, after the contribution was received". There appears to be no authority to delegate this responsibility to a third party. The Board also notes that the information on a PCR receipt is not public data.

Issued September 13, 2005

 /s/ Terri Ashmore
Terri Ashmore, Chair
Campaign Finance and Public Disclosure Board

Cited Statutes and Administrative Rules

Minn. Stat. §211B.15 Corporate political contributions.

Subdivision 1. **Definitions.** For purposes of this section, "corporation" means:

- (1) a corporation organized for profit that does business in this state;
- (2) a nonprofit corporation that carries out activities in this state; or
- (3) a limited liability company formed under chapter 322B, or under similar laws of another state, that does business in this state.

Subd. 2. **Prohibited contributions.** A corporation may not make a contribution or offer or agree to make a contribution, directly or indirectly, of any money, property, free service of its officers, employees, or members, or thing of monetary value to a major political party, organization, committee, or individual to promote or defeat the candidacy of an individual for nomination, election, or appointment to a political office. For the purpose of this subdivision, "contribution" includes an expenditure to promote or defeat the election or nomination of a candidate to a political office that is made with the authorization or expressed or implied consent of, or in cooperation or in concert with, or at the request or suggestion of, a candidate or committee established to support or oppose a candidate.

Minn. Stat. §290.06

Subd. 23. **Refund of contributions to political parties and candidates.** (a) A taxpayer may claim a refund equal to the amount of the taxpayer's contributions made in the calendar year to candidates and to a political party. The maximum refund for an individual must not exceed \$50 and for a married couple, filing jointly, must not exceed \$100. A refund of a contribution is allowed only if the taxpayer files a form required by the commissioner and attaches to the form a copy of an official refund receipt form issued by the candidate or party and signed by the candidate, the treasurer of the candidate's principal campaign committee, or the chair or treasurer of the party unit, after the contribution was received. The receipt forms must be numbered, and the data on the receipt that are not public must be made available to the campaign finance and public disclosure board upon its request. A claim must be filed with the commissioner no sooner than January 1 of the calendar year in which the contribution was made and no later than April 15 of the calendar year following the calendar year in which the contribution was made. A taxpayer may file only one claim per calendar year. Amounts paid by the commissioner after June 15 of the calendar year following the calendar year in which the contribution was made must include interest at the rate specified in section 270.76.

- (b) No refund is allowed under this subdivision for a contribution to a candidate unless the candidate:

- (1) has signed an agreement to limit campaign expenditures as provided in section 10A.322;
- (2) is seeking an office for which voluntary spending limits are specified in section 10A.25; and
- (3) has designated a principal campaign committee.

This subdivision does not limit the campaign expenditures of a candidate who does not sign an agreement but accepts a contribution for which the contributor improperly claims a refund.

- (c) For purposes of this subdivision, "political party" means a major political party as defined in section 200.02, subdivision 7, or a minor political party qualifying for inclusion on the income tax or property tax refund form under section 10A.31, subdivision 3a.

A "major party" or "minor party" includes the aggregate of that party's organization within each house of the legislature, the state party organization, and the party organization within congressional districts, counties, legislative districts, municipalities, and precincts.

"Candidate" means a candidate as defined in section 10A.01, subdivision 10, except a candidate for judicial office.

"Contribution" means a gift of money.

- (d) The commissioner shall make copies of the form available to the public and candidates upon request.
- (e) The following data collected or maintained by the commissioner under this subdivision are private: the identities of individuals claiming a refund, the identities of candidates to whom those individuals have made contributions, and the amount of each contribution.
- (f) The commissioner shall report to the campaign finance and public disclosure board by each August 1 a summary showing the total number and aggregate amount of political contribution refunds made on behalf of each candidate and each political party. These data are public.
- (g) The amount necessary to pay claims for the refund provided in this section is appropriated from the general fund to the commissioner of revenue.
- (h) For a taxpayer who files a claim for refund via the Internet or other electronic means, the commissioner may accept the number on the official receipt as documentation that a contribution was made rather than the actual receipt as required by paragraph (a).

