

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: Contributions to a Political Party Unit from a Principal Campaign
Committee and Multicandidate Political Party Expenditures**

ADVISORY OPINION 370

SUMMARY

A principal campaign committee may contribute funds to a political party unit with knowledge that the funds will be used on multicandidate political party expenditures. A contribution made with expressed or implied conditions on which candidates benefit from the multicandidate political party expenditure violates the prohibition on earmarking.

FACTS

As the Treasurer of a Principal Campaign Committee (the Committee), registered with the Campaign Finance and Public Disclosure Board (the Board), and as the Chair of a political party unit (the Political Party), registered with the Board, you jointly ask for an advisory opinion based on the following facts.

1. The Committee intends to make a number of substantial contributions to the Political Party.
2. The Political Party will use the contributions to fund a number of multicandidate political party expenditures as defined in Minn. Stat. §10A.275.
3. The Committee will have final authority over how its own funds are spent, including the decision on whether to make a contribution to the Political Party.
4. The Political Party will have final authority over how all Party funds are spent, including those contributed from the Committee.
5. It is expected that the officers of the Political Party and the Committee will consult with each other and develop a “coordinated” approach for the expenditures allowable under Minn. Stat. §10A.275.

ISSUE ONE

Is there any limit on the number or amount of contributions made by the Committee to the Political Party?

OPINION ONE

No. There is no provision in Chapter 10A that limits the number or amount of contributions from a candidate's principal campaign committee to a political party unit.

ISSUE TWO

How should contributions made by the Committee to the Political Party be reported to the Board?

OPINION TWO

As provided in Minn. Stat. §10A.01, subd. 26 (17), contributions from a candidate's principal campaign committee to a political party unit are noncampaign disbursements. Therefore the contributions do not count against the campaign expenditure limit established in Minn. Stat. §10A.25 for candidates who sign the public subsidy agreement.

Assuming that the contributions have a cumulative value in excess of \$100, the contributions must be itemized by both the Committee and the Political Party on periodic Reports of Receipts and Expenditures with the date and amount of each contribution made or accepted.

ISSUE THREE

May the Committee and Political Party consult on the multicandidate political party expenditures made by the Political Party with funds contributed by the Committee?

OPINION THREE

Multicandidate political party expenditures are defined in Minn. Stat. §10.275 as expenditures made "by a party unit, or two or more party units acting together". The statute does not authorize political party units and principal campaign committees to jointly make multicandidate political party expenditures, and if the consultation contemplated amounts to joint decision making, the expenditure falls outside the definition of a multicandidate party expenditure. Moreover, if the consultation amounts to an implied condition being placed on the political committee's contribution, the political party runs the risk of earmarking. (See also Response to Issue Four.)

As provided in the facts of this advisory opinion request, the Political Party will retain control of its funds and is therefore solely responsible for all expenditures made with those funds.

ISSUE FOUR

Is the Committee “earmarking” the contributions it makes to the Political Party if the Committee consults and coordinates with the Political Party on the multicandidate political party expenditures financed with the contributions?

OPINION FOUR

Minn. Stat. §10A.16 prohibits “earmarking” which is defined in part as a political party unit soliciting or accepting a contribution from any source with the express or implied condition that the contribution or any part of the contribution be directed to a particular candidate. If, during the consultation and coordination between the Committee and Political Party on multicandidate political party expenditures, the Committee places express or implied conditions that the contributions benefit specific candidates, the contributions are prohibited as earmarking.

Whether consulting with a candidate becomes earmarking depends on the nature of the consultation and the extent to which the political party’s autonomous decision making is compromised. For example, holding a fundraiser for three or more candidates without the attendance of the candidates it benefits, or providing party staff services to candidates without their knowledge, would be difficult and nonsensical. Therefore, “consulting” between candidates and political party units on such multicandidate political party expenditures is not prohibited. However, a consultation for the purpose of allocating certain campaign expenditures between the Political Party and the Committee reflects a degree of coordination that is prohibited.

The Board notes that the term “consults and coordinates” could describe a wide variety of communication between the Committee and the Political Party. The Board must evaluate each situation on a case by case basis to determine whether the consultation or coordination amounts to prohibited earmarking.

ISSUE FIVE

What type of expenditures may the Political Party make for a political party fund-raising effort?

OPINION FIVE

There is not a specific form that a political party fundraising effort under Minn. Stat. §10A.275, subd. 1(4), must take. Fundraising dinners, media solicitation, written/direct

mail solicitation, telephone solicitation, and in-person solicitation are all examples of fundraising efforts that may qualify as a multicandidate expenditure. The fundraising effort must be related to an effort to raise funds for three or more candidates who seek nomination or election as a state constitutional officer, legislator, or judge.

ISSUE SIX

Is there a limit on the amount the Political Party spends on multicandidate political party expenditures?

OPINION SIX

No. Minn. Stat. §10A.275 does not limit the amount that a party unit can spend on multicandidate political party expenditures.

ISSUE SEVEN

What is the definition of “party committee staff services” as provided in Minn. Stat. §10A.275, and what standards must Political Party staff meet in order for their activities to qualify as a multicandidate political party expenditure?

OPINION SEVEN

Party committee staff services qualify as a multicandidate political party expenditure under Minn. Stat. §10A.275 if the services encompass the nomination or election of three or more candidates for state constitutional, legislative, or judicial office. The party staff’s salaries and benefits may be a multicandidate political party expenditure if the staff is working on the campaigns of three or more state level candidates.

Minn. Stat. §10A.275 does not provide guidelines for evaluating if staff services qualify as multicandidate political party expenditures. One indication of proper classification of party staff services as a multicandidate political party expenditure is whether the services benefit three or more candidates in approximately equal amounts.

If the cost of providing staff services to three or more candidates is not approximately equal for each candidate the excess amount spent on a candidate for staff services may be a donation in kind to that candidate.

ISSUE EIGHT

Is the cost of office space, computers, computer software, computer databases, office equipment, long distance phone service, paper, and copying services provided to Political Party staff while the staff provides services to three or more candidates a multicandidate political party expenditure?

OPINION EIGHT

No. Minn. Stat. §10A.275, subd. 1 (5), provides for “expenditures for party committee staff services that benefit three or more candidates”; the term “staff services” is not inclusive of expenditures made on behalf of a candidate by party staff, or of expenditures made by the Political Party to house or equip party staff while the staff works on the campaigns of candidates.

The Political Party may pay a party staff member who goes to a candidate’s campaign office and use the candidate’s committee computer, copying machine, paper, long distance phone service, and other office services and equipment as a multicandidate political party expenditure because those services and items have been purchased by the candidate’s committee.

If the party staff uses the Political Party’s office space, computers, copying machine, paper, long distance phone service, or other office services or items to benefit a single candidate, the cost of those services and items is either an in-kind donation to the candidate from the Political Party, or an expenditure by the Political Party that will be reimbursed by the candidate’s committee. If a candidate’s committee does not reimburse the Political Party for the cost of the item or service provided, the value of the in-kind donation counts against the political party contribution limit provided in Minn, Stat, §10A.27, subd. 2., and may apply to a candidate’s campaign expenditure limit.

It should be noted that the Political Party may provide office space and the material and services listed in issue nine for the use of staff conducting the other activities permitted under Minn. Stat. §10A.275. For example, the statute provides for expenditures “for a telephone conversation including the names of three or more individuals whose names appear on the ballot”; long distance phone services used for this purpose are a multicandidate political party expenditure. However, if the same phone service is used by political party staff to place calls on behalf of one candidate the value of the phone service is then an in-kind donation or a cost to be billed to the candidate’s committee.

The Board notes that funds received by the Political Party through the political contribution check off program provided in Minn. Stat. §10A.31, subd. 5, may only be spent on multicandidate political party expenditures. The Political Party will need to insure that items or services purchased with funds from the contribution check off program are used only for the activities provided in Minn. Stat. §10A.275.

ISSUE NINE

If a candidate provides space in his or her campaign office for Political Party staff to use while performing “party committee staff services” as provided in Minn. Stat. §10A.275, how is the cost of the space allocated and reported to the Board?

OPINION NINE

If the Political Party staff is working on behalf of the candidate's campaign no allocation of the office space is required. If the Political Party's staff is working in the candidate's office on one of the other activities provided in Minn. Stat. §10A.275, then the fair market value of the office space is an in-kind donation to the Political Party.

If the candidate's committee is providing the office space as an in-kind donation to the Political Party, the candidate's committee will report the fair market value of the donation as a contribution to the Political Party. The Political Party will report the in-kind donation of the office space as both a contribution from the candidate and as an in-kind expenditure by the Political Party.

ISSUE TEN

If campaign services are provided by unpaid campaign staff or unpaid party staff, must allocations among candidates with respect to such services be made?

OPINION TEN

No. Minn. Stat. §10A.01, subd. 11 (c), provides that the term contribution "does not include 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...". Therefore, individuals volunteering their time to a political party or a candidate are not the type of resource that must be allocated between the candidates and party units that benefit from the volunteer services.

If the unpaid staff is reimbursed for costs related to campaigning, for example the use of an automobile, the reimbursement must be allocated between the principal campaign committees and party units that benefited from the volunteer's activities. If all of the volunteers campaigning costs are reimbursed by one of the candidates, the other candidates will receive a prohibited in-kind contribution. If all of the volunteers campaigning costs are reimbursed by a party unit the candidates will receive an in-kind donation that counts against political party contribution limit.

ISSUE ELEVEN

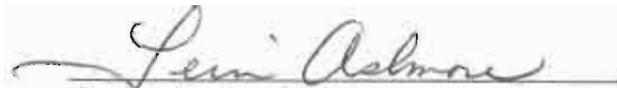
May this advisory opinion be relied upon by the principal campaign committees of other candidates that belong to the Political Party?

OPINION ELEVEN

No. Minn. Stat. §10A.02, subd. 12, provides in part that the guidance provided in an advisory opinion is only binding on the Board concerning the activities of the person or association that asked for the advisory opinion. The Board cautions individuals who rely on advisory opinions for guidance that even a single variation in the facts of an advisory opinion may affect its applicability to their situation.

However, advisory opinions do reflect the position of the Board given the statutory guidance at the time the advisory opinion is issued. If other principal campaign committees provide the same facts and ask the same questions provided in this advisory opinion request they will receive the same guidance, assuming that applicable statutes do not change.

Issued November 22, 2005



Terri Ashmore, Chair
Campaign Finance and Public Disclosure Board

Cited Statutes and Administrative Rules

10A.02

Subd. 12. **Advisory opinions.** (a) The board may issue and publish advisory opinions on the requirements of this chapter based upon real or hypothetical situations. An application for an advisory opinion may be made only by an individual or association who wishes to use the opinion to guide the individual's or the association's own conduct. The board must issue written opinions on all such questions submitted to it within 30 days after receipt of written application, unless a majority of the board agrees to extend the time limit.

(b) A written advisory opinion issued by the board is binding on the board in a subsequent board proceeding concerning the person making or covered by the request and is a defense in a judicial proceeding that involves the subject matter of the opinion and is brought against the person making or covered by the request unless:

- (1) the board has amended or revoked the opinion before the initiation of the board or judicial proceeding, has notified the person making or covered by the request of its action, and has allowed at least 30 days for the person to do anything that might be necessary to comply with the amended or revoked opinion;
- (2) the request has omitted or misstated material facts; or
- (3) the person making or covered by the request has not acted in good faith in reliance on the opinion.

(c) A request for an opinion and the opinion itself are nonpublic data. The board, however, may publish an opinion or a summary of an opinion, but may not include in the publication the name of the requester, the name of a person covered by a request from an agency or political subdivision, or any other information that might identify the requester, unless the person consents to the inclusion.

10A.16 Earmarking contributions prohibited.

An individual, political committee, political fund, principal campaign committee, or party unit may not solicit or accept a contribution from any source with the express or implied condition that the contribution or any part of it be directed to a particular candidate other than the initial recipient. An individual, political committee, political fund, principal campaign committee, or party unit that knowingly accepts any earmarked contribution is guilty of a gross misdemeanor and subject to a civil penalty imposed by the board of up to \$3,000.

10A.27 Contribution limits.

Subd. 2. **Political party and dissolving principal campaign committee limit.** A candidate must not permit the candidate's principal campaign committee to accept contributions from any political party units or dissolving principal campaign committees in aggregate in excess of ten times the amount that may be contributed to that candidate as set forth in subdivision 1.

The limitation in this subdivision does not apply to a contribution from a dissolving principal campaign committee of a candidate for the legislature to another principal campaign committee of the same candidate.

10A.275 Multicandidate political party expenditures.

Subdivision 1. **Exceptions.** Notwithstanding other provisions of this chapter, the following expenditures by a party unit, or two or more party units acting together, with at least one party unit being either: the state committee or the party organization within a congressional district, county, or legislative district, are not considered contributions to or expenditures on behalf of a candidate for the purposes of section 10A.25 or 10A.27 and must not be allocated to candidates under section 10A.20, subdivision 3, paragraph (g):

- (1) expenditures on behalf of candidates of that party generally without referring to any of them specifically in a published, posted, or broadcast advertisement;
- (2) expenditures for the preparation, display, mailing, or other distribution of an official party sample ballot listing the names of three or more individuals whose names are to appear on the ballot;
- (3) expenditures for a telephone conversation including the names of three or more individuals whose names are to appear on the ballot;
- (4) expenditures for a political party fund-raising effort on behalf of three or more candidates; or
- (5) expenditures for party committee staff services that benefit three or more candidates.