

Minnesota

# *Campaign Finance and Public Disclosure Board*



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REQUESTER OF THE ADVISORY OPINION, WHICH IS NON PUBLIC DATA  
under Minn. Stat. § 10A.02, subd. 12(b)**

**RE: Allocation of the Cost of a Media Campaign Used for Multiple Purposes**

## **ADVISORY OPINION 376**

### **SUMMARY**

The cost of an extended media campaign that is used for multiple purposes must be reasonably allocated among the multiple purposes and the appropriate allocated cost reported as a campaign expenditure when the purpose is to promote the election or defeat of a candidate, and as a lobbying disbursement when the purpose is to urge the public to communicate with public officials.

### **FACTS**

As Counsel for an association (the Association) that has lobbyists registered with the Campaign Finance and Public Disclosure Board (the Board) and that is the supporting organization for a political fund (the Political Fund) registered with the Board, you request an advisory opinion based on the following:

1. The Association plans an extended public media campaign to encourage and secure support for its recommended approach to a specific issue.
2. The media campaign is intended to extend over several years. In each year, the media campaign's activities will be divided into four periods.
3. Period One of the media campaign will include advertisements to focus attention on the relevant issues, without any reference to legislation, legislators or candidates. The sole purpose of Period One is to raise specific issues as a matter of public concern. The Association does not intend to report expenditures related to this period to the Board.
4. Period Two will occur when the legislature is in session. The advertisements in Period Two will continue to state the importance of a specific issue, but will also

requests to the public to contact their legislators on the issue, and may include requests that the public contact their legislators on legislation related to the issue. All such media fund expenditures in this period will be reported by the Association on lobbyist disbursement and lobbyist principal reports.

5. Period Three will occur after the legislature has adjourned. During this period the media campaign will include advertisements of the kind provided in Period One in order to sustain the public's attention to the relevant issue and emphasize the issue's importance in the 2006 election. The media ads will not ask the public to vote for "clearly identified candidates". The media ads will ask the public to make a specific issue a priority when considering candidates for public office, but will not identify candidates that support the specific issue and will not attempt to influence the election of any particular candidate.
6. During Period Three the Political Fund will endorse candidates and promote the endorsements in mailing that will be paid for with the Political Fund's resources. The cost of the endorsement mailings will be reported to the Board by the Political Fund.
7. In Period Four, beginning in September 2006, the media campaign will include advertisements that continue to urge the public to give priority to the relevant issues in choosing candidates at the election, but the campaign will not ask the public to support specific candidates and will not identify candidates that support the relevant issue. During this period, the Political Fund will make independent expenditures to influence the election of candidates. The expenditures may use advertising elements derived from the public media campaign. The Political Fund will report the cost of the independent expenditures to the Board.
8. The media campaign may be designed and produced so that similar graphics and other media elements are used throughout, to enhance the effectiveness of all parts of the campaign through its entire existence.

### **ISSUE ONE**

Are any of the Association's expenditures for the media campaign during any period of the campaign, "campaign expenditures" as defined by Minnesota Statutes, section 10A.01, subdivision 9, subject to the reporting requirements of Minnesota Statutes, section 10A.20 and the related provisions of Minnesota Statutes, Chapter 10A?

### **OPINION ONE**

Yes, the costs of the parts of the media campaign that are for the purpose of influencing the election or defeat of specific candidates, including the parts that identify candidates who support the desired approach to the issue that is the focus of the media campaign, are campaign expenditures and reportable by the Political Fund.

Also, because the media campaign will be used in part to educate the public on issues, in part as a lobbying effort, and in part for independent expenditures to influence the election of candidates, the cost of planning and developing the media campaign must be allocated on a reasonable basis among these purposes and appropriately reported by the Association or its Political Fund.

With regard to lobbying disbursements, Minnesota Rules 4511.0600, subpart 4, provides that “A disbursement that is partially in support of lobbying and partially for a nonlobbying purpose must be allocated on a reasonable basis between the two purposes and the portion which is for lobbying activities must be reported”. The portion of the cost of the planning and development of the media campaign that is reasonably allocated to lobbying must be included in the lobbyist disbursements and lobbyist principal report submitted to the Board.

Similarly, if the Political Fund pays to broadcast or print advertisements that were in whole or in part developed as part of the media campaign then a portion of the cost of planning and developing the media campaign must be reasonably allocated to the Political Fund as campaign expenditures. Because the Association may not make expenditures to influence the nomination or election of a candidate, the Political Fund should reimburse the Association for the fair market value of its part of the planning and development cost of the media campaign as reasonably allocated among the campaign’s multiple purposes. The Political Fund should then report the reimbursement of the allocated cost as a campaign expenditure as provided by Minnesota Statutes, section 10A.20.

## **ISSUE TWO**

Are the Association’s expenditures during any period of the campaign that urge the public to give priority to the relevant issues when voting for candidates, but without identifying specific candidates, “campaign expenditures” as defined by Minnesota Statutes, section 10A.01, subdivision 9, subject to the reporting requirements of Minnesota Statutes, section 10A.20 and the related provisions of Minnesota Statutes, chapter 10A?

## **OPINION TWO**

No, to the extent that the issue refers to the expenditures made by the Association itself to broadcast or print the media campaign advertisements. Any expenditures to influence the nomination or election of an identifiable candidate must be made and reported by the Political Fund. The Association may not make expenditures to influence the nomination or election of a candidate.

As provided in Opinion One the cost of planning and developing a media campaign, must be allocated among the multiple purposes the media campaign serves. The portion that is allocated to the purpose of influencing the nomination or election of a candidate is reportable as a campaign expenditure by the Political Fund under Minnesota Statutes, section 10A.20.

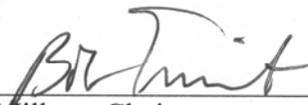
### ISSUE THREE

Are the opinions that answer the preceding issues in this opinion affected by the fact that the public media campaign may be produced by the same vendor and employ similar media elements throughout its existence?

### OPINION THREE

No. Allocated portions of the media campaign costs are reportable because of their use for activities that require reporting. The production of the media campaign by a single vendor and its use of similar media elements throughout do not affect the opinions.

Issued February 24, 2006

  
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Bob Milbert, Chair  
Campaign Finance and Public Disclosure Board

## Cited Statutes and Administrative Rules

### 10A.01 Definitions

Subdivision. 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.

### 10A.20 Campaign reports.

Subdivision 1. **First filing; duration.** The treasurer of a political committee, political fund, principal campaign committee, or party unit must begin to file the reports required by this section in the first year it receives contributions or makes expenditures in excess of \$100 and must continue to file until the committee, fund, or party unit is terminated.

Subd. 1a. **If treasurer position is vacant.** If the position of treasurer of a principal campaign committee, political committee, political fund, or party unit is vacant, the candidate, chair of a political committee or party unit, or association officer of a political fund is responsible for filing reports required by this section.

Subd. 2. **Time for filing.** (a) The reports must be filed with the board on or before January 31 of each year and additional reports must be filed as required and in accordance with paragraphs (b) and (c).

(b) In each year in which the name of the candidate is on the ballot, the report of the principal campaign committee must be filed 15 days before a primary and ten days before a general election, seven days before a special primary and a special election, and ten days after a special election cycle.

(c) In each general election year, a political committee, political fund, or party unit must file reports 15 days before a primary and ten days before a general election.

Subd. 3. **Contents of report.** (a) The report must disclose the amount of liquid assets on hand at the beginning of the reporting period.

(b) The report must disclose the name, address, and employer, or occupation if self-employed, of each individual or association that has made one or more contributions to the reporting entity, including the purchase of tickets for a fund-raising effort, that in aggregate within the year exceed \$100 for legislative or statewide candidates or ballot questions, together with the amount and date of each contribution, and the aggregate amount of contributions within the year from each source so disclosed. A donation in kind must be disclosed at its fair market value. An approved expenditure must be listed as a donation in kind. A donation in kind is considered consumed in the reporting period in which it is received. The names of contributors must be listed in alphabetical order. Contributions from the same contributor must be listed under the same name. When a contribution received from a contributor in a reporting period is added to previously reported unitemized contributions from the same contributor and the aggregate exceeds the disclosure threshold of this paragraph, the name, address, and employer, or occupation if self-employed, of the contributor must then be listed on the report.

(c) The report must disclose the sum of contributions to the reporting entity during the reporting period.

(d) The report must disclose each loan made or received by the reporting entity within the year in aggregate in excess of \$100, continuously reported until repaid or forgiven, together with the name, address, occupation, and principal place of business, if any, of the lender and any endorser and the date and amount of the loan. If a loan made to the principal campaign committee of a candidate is forgiven or is repaid by an entity other than that principal campaign committee, it must be reported as a contribution for the year in which the loan was made.

(e) The report must disclose each receipt over \$100 during the reporting period not otherwise listed under paragraphs (b) to (d).

(f) The report must disclose the sum of all receipts of the reporting entity during the reporting period.

(g) The report must disclose the name and address of each individual or association to whom aggregate expenditures, including approved expenditures, have been made by or on behalf of the reporting entity within the year in excess of \$100, together

with the amount, date, and purpose of each expenditure and the name and address of, and office sought by, each candidate on whose behalf the expenditure was made, identification of the ballot question that the expenditure was intended to promote or defeat, and in the case of independent expenditures made in opposition to a candidate, the candidate's name, address, and office sought. A reporting entity making an expenditure on behalf of more than one candidate for state or legislative office must allocate the expenditure among the candidates on a reasonable cost basis and report the allocation for each candidate.

- (h) The report must disclose the sum of all expenditures made by or on behalf of the reporting entity during the reporting period.
- (i) The report must disclose the amount and nature of an advance of credit incurred by the reporting entity, continuously reported until paid or forgiven. If an advance of credit incurred by the principal campaign committee of a candidate is forgiven by the creditor or paid by an entity other than that principal campaign committee, it must be reported as a donation in kind for the year in which the advance of credit was made.
- (j) The report must disclose the name and address of each political committee, political fund, principal campaign committee, or party unit to which contributions have been made that aggregate in excess of \$100 within the year and the amount and date of each contribution.
- (k) The report must disclose the sum of all contributions made by the reporting entity during the reporting period.
- (l) The report must disclose the name and address of each individual or association to whom noncampaign disbursements have been made that aggregate in excess of \$100 within the year by or on behalf of the reporting entity and the amount, date, and purpose of each noncampaign disbursement.
- (m) The report must disclose the sum of all noncampaign disbursements made within the year by or on behalf of the reporting entity.
- (n) The report must disclose the name and address of a nonprofit corporation that provides administrative assistance to a political committee or political fund as authorized by section 211B.15, subdivision 17, the type of administrative assistance provided, and the aggregate fair market value of each type of assistance provided to the political committee or political fund during the reporting period.

#### **4511.0600 REPORTING DISBURSEMENTS**

Subp. 4. **Disbursements which are only partially in support of lobbying.** A disbursement that is partially in support of lobbying and partially for a nonlobbying purpose must be allocated on a reasonable basis between the two purposes and the portion which is for lobbying activities must be reported.