

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

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Issued to: Mr. David Oxley
ACEC/MN Executive Director
10201 Wayzata Blvd., Suite 240
Minnetonka, MN 55305

RE: Creation and operation of conduit funds

ADVISORY OPINION 406

SUMMARY

A “conduit fund” organized and administered in accordance with the express and implied provisions of Minnesota Statutes, Section 211B.15, subd. 16, is not a political committee or political fund under Minnesota Statutes Chapter 10A and is not required to register with the Board. A corporation may contract with an individual or another corporation for the administration of its sponsored conduit fund. An individual or a corporation may administer multiple conduit funds as long as the assets and records of each fund are separately maintained.

FACTS

As the representative of the American Council of Engineering Companies of Minnesota (ACEC/MN), you ask the Campaign Finance and Public Disclosure Board (Board) for an advisory opinion based on the following facts:

1. ACEC/MN is a Minnesota non-profit corporation that is a trade association representing 150 consulting engineering firms and affiliate members. The member firms provide a broad range of engineering and related services to both public and private clients.
2. Some of the member firms of ACEC/MN may wish to establish “conduit funds” as recognized under Minnesota Statutes, Section 211B.15, subd. 16.
3. It is the desire of the ACEC/MN member firms that the conduit funds they establish not be political committees or political funds that would be required to register and report under Minnesota Statutes Chapter 10A.
4. Each member firm that desires to do so would set up its own separate conduit fund. Deposits to a corporate-sponsored fund would not be commingled with deposits to any other corporation’s conduit fund.

5. A firm establishing a conduit fund may wish to contract with an outside individual to perform the administrative functions associated with the conduit fund including solicitation of the corporation's employees, receiving and recording employee deposits, and making transfers to candidates at the direction of the contributing employees.
6. As an alternative to contracting with an individual to perform the services described in paragraph 5, a member firm may wish to contract with ACEC/MN for those same services.
7. Since more than one of ACEC/MN's member firms may establish conduit funds, it is possible that the same individual, or ACEC/MN itself, may be contracted by more than one firm to perform the administrative services described in paragraph 5.

Issue One

Is a conduit fund established under Minnesota Statutes, Section 211B.15, subd. 16, a political committee or a political fund that is required to register and report under Minnesota Statutes Chapter 10A?

Opinion One

The question of corporation-sponsored employee contribution programs was first addressed by the Board in Advisory Opinion number 6 in 1974. At that time, Minnesota Statutes, Section 211B.15, subd. 16, had not been enacted, but the concept of a "conduit fund" existed in federal law. In Advisory Opinion number 6, the Board concluded that a corporation may establish a nonpartisan conduit plan to solicit voluntary contributions from employees if the individual employee making the contribution retains sole control over the disposition of the employee's accumulated funds.

The Board concluded in Opinion number 6 that if the conditions for a nonpartisan conduit fund were met, the fund did not constitute a political committee or a political fund that was required to register with and report to the Board because the corporate sponsor had no control over which candidates would receive contributions from the fund.

In 1996, the legislature enacted Minnesota Statutes, Section 211B.15, subd. 16, which codified the concept of and right to establish a "conduit fund" and, for the first time in statute, used the term "conduit fund". The enactment of this section strengthens the Board's 1974 conclusion that a properly formed and administered conduit fund is not a political committee or political fund under Chapter 10A.

While Chapter 211B is not within the Board's specific jurisdiction to interpret, it is necessary to review the conduit fund provisions in conjunction with the definitions of a political committee and a political fund under Chapter 10A in order to determine whether the conduit fund is something *other than* a political committee or a political fund.

Section 211B.15, subd. 16, sets forth the requirements for a conduit fund. The key requirements that separate such a fund from a Chapter 10A political committee or political fund are:

1. All solicitations for contributions to a corporate conduit fund that are directed to employees by the corporation “must be in writing, informational and nonpartisan in nature, and not promotional for any particular candidate or group of candidates”
2. “The solicitation must consist only of a general request on behalf of [the conduit fund] and must state that there is no minimum contribution, that a contribution or lack thereof will in no way impact the employee's employment”.
3. The solicitation must also state that “the employee must direct the contribution to candidates of the employee's choice, and that any response by the employee shall remain confidential and shall not be directed to the employee's supervisors or managers”.

The statutory requirements, when read as a whole, suggest some additional implicit requirements.

First, the concept of a conduit fund is embodied in a section regulating corporate participation in the political process. Implied in this fact and the language of the statute is the condition that a conduit fund may be established only by a corporation as defined in Minnesota Statutes, Section 211B.15, subd. 1. Also implicit is the condition that a conduit fund must be established by a single corporation. Multiple corporations may not participate in a single conduit fund. Each conduit fund must maintain its own depository and financial records.

Second, the section consistently refers to employee[s]. This reference implies that contributions to a conduit fund may be solicited and accepted only from the corporate sponsor's employees.

Third, the section refers to the content of a solicitation to an employee, indicating that the solicitation must state that the employee must direct the distribution of that employee's contributions to the conduit fund. Implicit in this provision (which specifies terms of the written solicitation) is the substantive requirement that the employee must, in fact, direct the distribution to candidates of his or her contributions to the conduit fund. The corporate sponsor may not be involved directly or indirectly in the determination of the recipients of an employee's contributions to the fund.

Finally, the section refers only to contributions to candidates. Implicit in these references is the condition that a conduit fund is a fund that does not make contributions to political committees or political funds or party units registered with the Board.

If a conduit fund meets the explicit requirements of §211B.15, subd 16, as well as the implicit requirements described above, the conduit fund is not a political committee or a political fund under Chapter 10A and is not required to register with or report to the Board.

Issue Two

May a corporation that has a properly organized and administered conduit fund retain and pay with corporate funds an individual, who is not an employee of the corporation, to handle some or all of the administrative aspects of the fund, including solicitation of the corporation's employees, receiving and recording employee deposits, receiving direction from employees as to the beneficiary of the employee's contributions, and making the transfers to candidates at the direction of the contributing employees?

Opinion Two

If a corporate conduit fund meets the requirements set forth in Opinion One, the fund's status with respect to Chapter 10A is not altered by the corporation's decision to pay an outside individual to administer the fund rather than undertaking that administration with corporate employees. Even if administration of the fund is contracted to another entity, the corporation retains the responsibility for compliance with applicable statutes.

Issue Three

May a corporation that has a properly organized and administered conduit fund retain and pay with corporate funds another corporate entity, such as the trade association of which the corporation is a member, to handle some or all of the administrative aspects of the fund, including solicitation of the corporation's employees, receiving and recording employee deposits, receiving direction from employees as to the beneficiary of the employee's contributions, and making the transfers to candidates at the direction of the contributing employees?

Opinion Three

If a corporate conduit fund meets the requirements set forth in Opinion One, the fund's status with respect to Chapter 10A is not altered by the corporation's decision to contract with another corporation, including the trade association of which the corporate employer is a member, to administer the fund rather than undertaking that administration with corporate employees. Even if administration of the fund is contracted to another entity, the corporation retains the responsibility for compliance with applicable statutes.

Caveat: The Board expresses no opinion as to whether undertaking such administrative tasks may affect the tax-exempt status of the nonprofit corporation assuming those responsibilities.

Issue Four

Does the Board's opinion change if the individual or corporate entity contracted to administer the conduit fund also administers conduit funds established by other corporate employers?

Opinion Four

The fact that an individual or corporate administrator may administer multiple corporate conduit funds does not make the administered funds political committees or political committees or funds as long as each conduit fund independently meets the requirements of Opinion One.

Board Note

In order to avoid confusion by the recipient of a contribution made through a conduit fund, the Board advises that the fund include with each contribution a letter explaining that the contribution is made through an employee conduit fund established under Minnesota Statutes section 211B.15, subd. 16, and that that the contribution(s) should be reported as being from the individuals and in the amounts listed.

Issued May 5, 2009


A. Hilda Bettermann, Chair
Campaign Finance and Public Disclosure Board

Statutory Citations

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. 16. **Employee political fund solicitation.** Any solicitation of political contributions by an employee must be in writing, informational and nonpartisan in nature, and not promotional for any particular candidate or group of candidates. The solicitation must consist only of a general request on behalf of an independent political committee (conduit fund) and must state that there is no minimum contribution, that a contribution or lack thereof will in no way impact the employee's employment, that the employee must direct the contribution to candidates of the employee's choice, and that any response by the employee shall remain confidential and shall not be directed to the employee's supervisors or managers. Questions from an employee regarding a solicitation may be answered orally or in writing consistent with the above requirements. Nothing in this subdivision authorizes a corporate donation of an employee's time prohibited under subdivision 2.