

State of Minnesota
Campaign Finance & Public Disclosure Board
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Advisory Opinion 423

Summary: Chapter 10A provides that associations may make donations in-kind to ballot question political committees or funds. This opinion discusses the various types of transactions likely to be encountered and explains the reporting requirements for each.

As the representative of an association whose members are nonprofit corporations, you ask for an advisory opinion on behalf of your organization's members based on the following facts:

1. The organization you represent is itself comprised of a number of associations, some of which have an interest in constitutional amendment questions that may appear on the ballot in November of 2012.
2. Some of your members may wish to establish political funds and register them with the Board for the purpose of influencing a ballot question.
3. The response to Question Four in recently published Advisory Opinion 421 appears to your members to say that an association may not make a ballot question expenditure and treat that expenditure as an in-kind contribution to a registered ballot question political committee or fund.
4. To clarify the Campaign Finance and Public Disclosure Board's advice on that question, your members ask a series of questions, which are reproduced below.

Opinion

Background

A "contribution" is money or anything else of value that is given to a registered political committee or fund. When something other than money is given, the contribution is referred to in statute as a "donation in-kind." In practice, the phrase "in-kind contribution" is used interchangeably with the phrase "donation in-kind". Both phrases can refer to either the transaction from the perspective of the donor who makes an in-kind contribution or from the perspective of the recipient who receives an in-kind contribution.

For clarification, the Board has restated your questions in the issue sections below.

Question One

Does the discussion in Issue Seven of Advisory Opinion 421 mean that associations with registered ballot question political funds may not make in-kind contributions to other ballot question political committees or funds? If not, how is an in-kind contribution different from the expenditures described in Issue Seven of Advisory Opinion 421?

Opinion

In Issue Seven of Advisory Opinion 421, an association asked if an expenditure to promote or defeat a ballot question should be reported as an in-kind contribution to its own political fund or as an in-kind contribution to a political committee that supports the same ballot question. The question did not suggest that the expenditure was made for the benefit of, or coordinated with, another political committee or fund.

In Opinion 421, the Board concluded that the transaction in question constituted an expenditure that must be reported on the association's political fund report schedule of ballot question expenditures. This Opinion, on the other hand, considers transactions where goods or services are either transferred to a recipient political committee or fund, or used on behalf of a recipient committee or fund.

Advisory Opinion 421 did not conclude that an association that has registered a political fund is prohibited from making in-kind contributions to other associations. Under Chapter 10A, associations may make in-kind contributions to other associations regardless of whether the donor has registered a political fund or not.

Question Two

How should an association that has registered its own political fund report an in-kind contribution that it makes to another political committee or fund?

Opinion

Reporting the use of association services

It is common for associations that have registered political funds to make use of association staff or resources for their own political fund purposes. It is also common for such associations to make staff or other resources available to other political committees or funds for ballot question purposes. Chapter 10A requires disclosure for both types of resource use. The disclosure is slightly different depending on whether the association making the resources available uses them for its own political fund purposes or transfers control to some other association for its purposes.

Regardless of whether an association will use its resources through its own political fund or transfer the use of the resources to some other association, the first transaction that must be disclosed is the allocation of the resources by the association to its own political fund account. This allocation is reported on the appropriate contribution schedule, depending on whether the source of the allocation is business revenue or general treasury money. The Board recognizes that an association's use of its own money to promote or defeat a ballot question is not

technically a "contribution" to the association's political fund. However, such an allocation is disclosed with other contributions to provide citizens with a simple means to examine all money and resources that have been made available to the association for ballot question purposes.¹ If statutory thresholds are met, the association must provide the Minn. Stat. §10A.27, subd. 15, underlying source disclosure for an allocation of resources to its political fund account.

In addition to documenting the allocation of resources on its schedule of contributions received, the donor association must account for the use of the resources. If the association maintains control of the resources and uses them for its own activities to promote or defeat a ballot question, the use of the resources is disclosed as an in-kind expenditure. If the association surrenders control and use of the resources to some other association, the use of the resources is reported as an in-kind contribution to the recipient committee or fund.

Underlying source disclosure requirements apply when the association allocates the resources to its political fund account. Thus, any underlying source disclosure statement will be retained by the original association and filed with its political fund report. If use of the resources is transferred to some other committee or fund as an in-kind contribution, an underlying source disclosure statement is not required because the in-kind contribution is from a registered ballot question fund. The recipient association must report the value of the resources as a donation in-kind received from the registered political fund of the donor association. The recipient association must also account for the use of the resources by recording a corresponding in-kind expenditure.

Reporting the use of purchases made for the use and benefit of another association.

The Board recognizes that, in their efforts to promote or defeat a ballot question, associations may collaborate and that a lead, or "umbrella" association, may coordinate the work of other associations. In this context one association may agree to pay vendors or service providers for goods or services that are specifically for the benefit of, and coordinated with, another association, such as an umbrella association.

Regardless of the relationships and agreements between associations, Chapter 10A requires disclosure that will reflect the actual transactions between the associations and the vendors or service providers involved.

This section of this Opinion considers reporting requirements when an association that has registered a political fund ("the donor association") enters into a prior agreement with another association that is a registered political committee or has registered a political fund ("the recipient association") under which the recipient association agrees to accept the benefit of a purchase and to report it as an in-kind contribution from the donor association. Under this scenario, the recipient association will approve the content, medium, timing, and other aspects of the goods or services purchased so that the transaction also constitutes an in-kind expenditure by the recipient association.

The Board recognizes that the above transaction occurs in the same manner as a Chapter 10A "approved expenditure" except for the fact that approved expenditures are expenditures for the benefit of candidates. An approved expenditure transaction uses a more streamlined reporting procedure for the donor, which the Board will also permit in the ballot question context.

¹ In addition to the disclosure method described in this opinion, the Board has recognized a streamlined reporting method for associations that use *only* their own money to promote or defeat a ballot question. That method is still available to those associations who meet the requirements for its use.

For transactions that fit the scenario described in this section of this Opinion, the donor association may report the entire transaction as a single entry on the schedule of contributions made. The contribution entry will identify the recipient committee or fund that benefited from the expenditure. The amount paid to the vendor or service provider must be listed in the "cash" column, since the payment reduces the donor fund's cash on hand. The donor association must also indicate that the donation was in the form of a payment to a vendor, listing the vendor's name and address and describing the goods or services provided that were used for the donation in-kind.

The recipient committee or fund will report the receipt of an in-kind contribution of goods or services from the donor association and a corresponding in-kind expenditure. Reporting the receipt of an in-kind contribution requires describing the goods or services received.

Question Three

May an association that does not have a political fund registered with the Board pay for goods and services as an in-kind contribution to a ballot question political committee or fund under Minnesota Statutes section 10A.27, subd. 14 or 15? If so, what reporting is required?

Opinion

In 2010, the legislature enacted statutes that allow corporations and other associations to make independent expenditures either by making their own independent expenditures, which will be reported through a political fund account, or by contributing money to an existing registered political committee or fund. In a recent statement of guidance, the Board indicated that it would allow ballot question political committees or funds to register and report under the 2010 legislation.

The option of contributing money to a registered political committee or fund makes it possible for associations to make monetary contributions to promote or defeat a ballot question without being required to register with the Board. If statutory thresholds are met, these donor associations must provide specified disclosure of the underlying sources of money used to make their contributions.

The provisions that allow an association to make contributions without registering are found in §10A.27, subds. 14 and 15, both of which refer to contributions of "revenue", which in its ordinary sense, means money. The Board interprets your question as asking whether an association may also donate staff services and association resources, or pay for vendors on behalf of a recipient association without registering its own political fund.

Both the legislative history and the language of subdivisions 14 and 15 make it clear that the 2010 disclosure options were enacted to provide alternatives to §10A.27, subd. 13. That section provides a mechanism for making both monetary and in-kind contributions without registering. Because subdivisions 14 and 15 are alternatives to subdivision 13, the Board construes them as being applicable to the same scope of transactions; that is, to "contributions" in general; not only to monetary contributions. The reference in the 2010 statutes to contributions of "revenue" is interpreted to mean contributions of revenue or of goods or services paid for with the type of revenue specified in the respective subdivision.

This interpretation results in the conclusion that an association that has not registered a political fund account with the Board may make in-kind contributions to registered political committees or funds under the provisions of Minn. Stat. §10A.27, subds. 14 and 15, and will not be required to register its own political fund.

Typical in-kind contributions consist of staff services, office space, phone banks, mailing lists and similar services. However, the additional question raised in this request is whether an association that does not have a political fund registered with the board may make purchases from outside vendors or service providers and report those purchases as in-kind contributions to a registered political committee or fund.

Past Board filings provide evidence of the practice of unregistered associations coordinating with registered political committees or funds to pay vendors and report the payment as a contribution to the registered political committee or fund rather than as an expenditure that would require the unregistered association to register. However, the Board has not previously addressed this practice in a formal way.

An association that makes more than \$5,000 in Chapter 10A “expenditures” to promote or defeat a ballot question must register with and report to the Board. An association that does not make “expenditures” or accept Chapter 10A “contributions” is not required to register. Therefore, it is important to recognize the distinction between making in-kind contributions that result from the payment for goods and services and making “expenditures”, as the latter may trigger a registration requirement.

When an association retains final authority to decide on the content, medium, timing, and other aspects of the purchase of goods or services to promote or defeat a ballot question, the transaction results in a Chapter 10A expenditure.

A purchase of goods or services may be reported as an in-kind contribution to a registered political committee or fund if the following conditions are met:

1. The association making the purchase (the donor association) has not registered a political fund account with the Board and is not required to do so;
2. The donor association has entered into a prior agreement with an association that is a registered political committee or an association that has registered a political fund (the recipient association) under which the recipient association agrees to accept the benefit of the purchase and to report it as an in-kind contribution from the donor association; and
3. The recipient association has final authority to approve the content, medium, timing, and other aspects of the goods or services purchased.

When the donor association makes an in-kind contribution, either of its own services or resources, or by the purchase of goods or services as described above, the donor association must provide to the recipient association any underlying source disclosure required under Minnesota Statutes section 10A.27, subd. 15. The recipient association must file the underlying source statement with its Report of Receipts and Expenditures that includes the in-kind contribution.

The recipient association must report the transaction as the receipt of an in-kind contribution of goods or services from the donor association and must report a corresponding in-kind expenditure. Reporting the receipt of an in-kind contribution requires describing the goods or services received. If the donated goods or services result from the donor association's payment to a vendor or service provider, the description of the goods and services must also include the name and address of the vendor or service provider from whom they were purchased by the donor association.

An association not registered with the Board that makes in-kind contributions consistent with this advisory opinion is operating under the provisions of Minn. Stat. §10A.27, subd. 14 or 15, and is not required to register with or report to the Board.

Issued February 14, 2012

/s/ Greg McCullough

Greg McCullough, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes

10A.01 DEFINITIONS.

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Subd. 4. **Approved expenditure.** "Approved expenditure" means an expenditure made on behalf of a candidate by an entity other than the principal campaign committee of the candidate, if the expenditure 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 the candidate, the candidate's principal campaign committee, or the candidate's agent. An approved expenditure is a contribution to that candidate.

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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.

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Subd. 11. **Contribution.** (a) "Contribution" means money, a negotiable instrument, or a donation in-kind that is given to a political committee, political fund, principal campaign committee, or party unit.

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Subd. 13. **Donation in-kind.** "Donation in-kind" means anything of value that is given, other than money or negotiable instruments. An approved expenditure is a donation in-kind.

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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.

10A.20 CAMPAIGN REPORTS.

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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.

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(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.

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(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.

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10A.26 CONTRIBUTIONS

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Subd. 13. **Unregistered association limit; statement; penalty.** (a) The treasurer of a political committee, political fund, principal campaign committee, or party unit must not accept a contribution of more than \$100 from an association not registered under this chapter unless the contribution is accompanied by a written statement that meets the disclosure and reporting period requirements imposed by section 10A.20. This statement must be certified as true and correct by an officer of the contributing association. The committee, fund, or party unit that accepts the contribution must include a copy of the statement with the report that discloses the contribution to the board. This subdivision does not apply when a national political party contributes money to its affiliate in this state.

(b) An unregistered association may provide the written statement required by this subdivision to no more than three committees, funds, or party units in a calendar year. Each statement must cover at least the 30 days immediately preceding and including the date on which the contribution was made. An unregistered association or an officer of it is subject to a civil penalty imposed by the board of up to \$1,000, if the association or its officer:

(1) fails to provide a written statement as required by this subdivision; or

(2) fails to register after giving the written statement required by this subdivision to more than three committees, funds, or party units in a calendar year.

(c) The treasurer of a political committee, political fund, principal campaign committee, or party unit who accepts a contribution in excess of \$100 from an unregistered association without the required written disclosure statement is subject to a civil penalty up to four times the amount in excess of \$100.

Subd. 14. **Contributions of business revenue.** An association may, if not prohibited by other law, contribute revenue from the operation of a business to an independent expenditure political committee or an independent expenditure political fund without complying with subdivision 13.

Subd. 15. **Contributions of dues or contribution revenue.** (a) An association may, if not prohibited by other law, contribute revenue from membership dues or fees, or from contributions received by the association to an independent expenditure political committee or an independent expenditure political fund without complying with subdivision 13. Before the day when the recipient committee or fund's next report must be filed with the board under section 10A.20, subdivision 2 or 5, an association that has contributed \$5,000 or more in aggregate to independent expenditure political committees or funds during the calendar year must provide in writing to the recipient's treasurer a statement that includes the name, address, and amount attributable to each individual or association that paid the association dues or fees, or made contributions to the association that, in total, aggregate \$1,000 or more of the contribution from the association to the independent expenditure political committee or fund. The statement must also include the total amount of the contribution from individuals or associations not subject to itemization under this section. The statement must be certified as true and correct by an officer of the donor association.

(b) To determine the membership dues or fees, or contributions made by an individual or association that exceed \$1,000 of the contribution made by the donor association to the independent expenditure political committee or fund, the donor association must:

(1) apply a pro rata calculation to all unrestricted dues, fees, and contributions received by the donor association in the calendar year; or

(2) as provided in paragraph (c), identify the specific individuals or associations whose dues, fees, or contributions are included in the contribution to the independent expenditure political committee or fund.

(c) Dues, fees, or contributions from an individual or association must be identified in a contribution to an independent expenditure political committee or fund under paragraph (b), clause (2), if:

(1) the individual or association has specifically authorized the donor association to use the individual's or association's dues, fees, or contributions for this purpose; or

(2) if the individual's or association's dues, fees, or contributions to the donor association are unrestricted and the donor association designates them as the source of the subject contribution to the independent expenditure political committee or fund. After a portion of an individual's or association's dues, fees, or contributions to the donor association have been designated as the source of a contribution to an independent expenditure political committee or fund, that portion of the individual's or association's dues, fees, or contributions to the donor association may not be designated as the source of any other contribution to an independent expenditure political committee or fund.

(d) For the purposes of this section, "donor association" means the association contributing to an independent expenditure political committee or fund that is required to provide a statement under paragraph (a).

Subd. 16. **Treasurer to submit disclosure statements.** The treasurer of a political committee or political fund receiving a statement required under subdivision 15, must file a copy of the statement before the deadline for the committee or fund's next report filed with the board under section 10A.20, subdivision 2 or 5, after receiving the statement.

Subd. 17. **Penalty.** (a) An association that makes a contribution under subdivision 15, and fails to provide the required statement within the time specified is subject to a civil penalty of up to four times the amount of the contribution, but not to exceed \$25,000, except when the violation was intentional.

(b) An independent expenditure political committee or an independent expenditure political fund that files a report without including the statement required under subdivision 15, is subject to a civil penalty of up to four times the amount of the contribution for which disclosure was not filed, but not to exceed \$25,000, except when the violation was intentional.

(c) No other penalty provided in law may be imposed for conduct that is subject to a civil penalty under this section.