

State of Minnesota
Campaign Finance & Public Disclosure Board
Suite 190, Centennial Building. 658 Cedar Street. St. Paul, MN55155-1603

**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: Disclosure related to ballot question committees

ADVISORY OPINION 426

SUMMARY

Minnesota Statutes Chapter 10A, provides for disclosure by associations that register political funds with the Board. This opinion describes the statutory requirements under various scenarios presented by the requester.

FACTS

As the representative of an association (the Requester), you ask for an advisory opinion based on the following facts:

1. The Requester is a social welfare, grassroots lobbying, and policy organization with qualified nonprofit corporation status under Internal Revenue Code section 501 (c)(4).
2. The Requester plans on establishing and registering a political fund in Minnesota for the purpose of supporting the constitutional amendment that will be on the November general election ballot and would, if enacted, place a definition of marriage in the Minnesota Constitution. The proposed amendment is referred to as "the Minnesota ballot question" in this opinion.
3. You are aware of previous Board advisory opinions on the subject of ballot question disclosure. However, because Minnesota statutes provide that an advisory opinion may be relied on only by the person making or covered by the request, you wish to confirm that your client may rely on principles articulated in previous opinions.

Based on the above statement of facts, you ask several questions about the disclosure required by Chapter 10A of Minnesota statutes as it applies to the Requester.

Introductory Statement

The issues raised in this request relate in part to the concept of a political fund and the association that supports it. It is important to understand that a political fund, as defined in Minn. Stat. § 10A.01, subd. 28, is simply an accumulation of money collected or expended for statutorily specified purposes. In the case of the requester, its political fund will consist of the

money collected or expended to promote or defeat a ballot question.

An association's political fund is not an entity separate from the association. Rather, it is an accumulation of money that is tracked and reported on using an accounting mechanism of the association's choosing. Thus references to a "transfer" or an "allocation" of money by an association to its political fund mean nothing more than the recording of an accounting record of the fact that an association's general treasury money has been used for purposes that, by statutory definition, make it a part of the association's political fund.

Throughout this opinion, the terms "general treasury money" or "general treasury funds" mean money that the association collects from dues, membership fees, or donations for its general purposes. These terms exclude "contributions" as that term is defined in Chapter 10A, which, in the present context, is money received by an association for the specific purpose of promoting or defeating a ballot question.

Question One

If The Requester were to make expenditures in excess of \$100 from its general treasury funds in support of the Minnesota ballot question, would The Requester then be required to publicly report all donors who contributed over \$100 regardless of the fact that their support is not or was not designated for the Minnesota ballot question?

Opinion

This question relates to the use of general treasury funds, which, as noted above, consist of both voluntary donations to the association and money that the association characterizes as membership dues or fees. By definition, general treasury funds do not arise from "contributions" as that word is defined in Chapter 10A. This section of this opinion does not apply to money raised by The Requester that would constitute Chapter 10A contributions.

Receipts of general treasury funds are not subject to the reporting requirement applicable to contributions, which requires itemization of any contribution of more than \$100. However, under Minn. Stat. § 10A.27, subd. 15, if The Requester uses \$5,000 or more of its general treasury money for expenditures to promote or defeat a ballot question, it must file a statement of underlying sources with its political fund report.

A statement of underlying sources may result in itemization of donors, but at a \$1,000-or-more threshold rather than at the more-than-\$100 threshold applicable to contributions.

Question Two

Practically, what must The Requester do when it transfers funds from its general treasury to its political fund? Is the record of the allocation of donors of less than \$1,000 maintained solely by The Requester or is it to be provided or reported to the Board? If it is not reported to the Board at the time of the transfer, are there circumstances when the Board would seek to obtain the allocation ledger? If the ledger must be provided to the Board, is there any protection for the disclosure of underlying source(s) of donors of less than \$1,000?

Opinion

In 2010, the legislature recognized independent expenditure political committees or funds as vehicles for making independent expenditures and other expenditures that do not constitute contributions to candidates or party units. In its recent guidance, the Board recognized that this

new legislation was broad enough to also apply to an association that made only ballot question expenditures. This recognition allows ballot question political committees or funds the option of reporting under the new independent expenditure political committee or fund disclosure statutes rather than under the disclosure statutes that existed prior to 2010.

Prior to 2010, Minn. Stat. § 10A.12, subd. 5, allowed an association to account for general treasury funds through a political fund account that it established and reported through. Under that section, the association was required to report to the Board with its political fund report the name of any individual whose donations to the association constituted more than \$100 in aggregate of the money that the association accounted for through its political fund.

Under the independent expenditure political fund disclosure requirements, no underlying source disclosure is required until the association has allocated \$5,000 or more in a year to its political fund account. Once allocations of \$5,000 or more have been made by an association, underlying source disclosure is required, which may or may not result in the disclosure of itemized sources.

Minnesota Statutes section 10A.27, subdivision 15, under which ballot question political funds may operate, provides that an association may allocate its transfer to a political committee or fund registered with the Board either by identifying from its donors those specific donors to whom it wants to allocate the transfer or by pro-rating the transfer over all of its donors. After applying either method, if the amount of the transfer allocated to an individual source is \$1,000 or more, the name and address of that source must be itemized on a statement of underlying sources.

If The Requester uses general treasury funds to promote or defeat a ballot question, it must prepare a statement of underlying sources and file it with the Board along with its next regular Report of Receipts and Expenditures.

The underlying calculations resulting in the allocation, including information related to the choice of allocation method, is retained with the donor association and not filed with the Board.

In the event of a Board investigation related to the activities of an association to promote a ballot question in Minnesota, it is possible that records of the calculation of the allocation could be requested by the Board. However, it is the Board's intention that in such a case, the association providing the records would substitute numbers for the actual names and addresses of the general treasury donors whose donations were part of the allocation. This would prevent the identification of donors whose names are not required to be itemized under § 10A.27, subd. 15.

Question Three

If The Requester wishes to contribute to a registered ballot question political committee, must those contributions be made from The Requester's political fund, or can The Requester contribute to a ballot question political committee directly from its general treasury funds? Do the reporting and disclosure requirements change based on the source of the contribution?

Opinion

Because The Requester will have registered a ballot question political fund with the Board, it may make contributions to registered ballot question political committees by allocating general treasury funds to its own political fund and then making a contribution to the recipient ballot question political committee that will be reported through The Requester's political fund account.

In the alternative, The Requester may make contributions to a registered ballot question political

committee directly using its general treasury funds. In either case, the underlying source disclosure requirements of Minn. Stat. § 10A.27, subd. 15, apply. In the case of the allocation to The Requester's own political fund account, The Requester would create an underlying source disclosure statement and file it with its next political fund account report. In the case of a direct contribution from general treasury funds to a registered ballot question political committee, The Requester would create an underlying source disclosure statement and provide it to the recipient ballot question political committee for filing with the recipient's next report.

If the Requester donates directly to a registered ballot question political committee, the recipient political committee will report the contribution received from the Requester, along with any required underlying source disclosure. The Requester Political Fund will have no reporting obligation with respect to the transaction.

If the Requester donates to a ballot question political committee by first allocating general treasury funds to the Requester political fund, then the Requester political fund will report the allocation to it of The Requester general treasury funds, along with any required underlying source disclosure. The Requester political fund will also report the contribution to the recipient ballot question political committee. The recipient political committee will report the receipt of a contribution from the Requester political fund, but would not receive or report any underlying source disclosure because the contribution would be coming from an association that has a political fund registered with and reporting to the Board.

Question Four

If The Requester writes in its regular publications such as its newsletter, or on its website, or in other educational materials regarding the importance of the Minnesota ballot question, may The Requester pay such costs as part of its normal program budget or must those costs all be paid by the political fund?

Opinion

The question is not whether these costs may be paid from one account or another. As has been explained in other sections of this Opinion, money becomes a part of an association's political fund when it is *used* to promote or defeat a ballot question. So whether the money is in one budget or another or one depository or another is not relevant.

The board assumes that the intent of the question is to ask whether the costs of the subject communications must be reported on the association's political fund report. Although the question provides little detail, it appears that the subject communications are for the purpose of promoting a ballot question. Thus, the costs of the communications are ballot question expenditures and must be reported on The Requester's political fund report.

Question Five

If, in a solicitation, The Requester references the Minnesota ballot question as one of the projects in which it is involved, are all resulting contributions to The Requester over \$100 subject to reporting to the Board by virtue of such references, even if not solicited specifically for the purpose and if each solicitation clearly stipulates that no contributions may be designated or earmarked for any purpose?

Opinion

The word "contributions" is specifically defined in Chapter 10A, and limits on its application have been provided in Board guidance. The Board interprets the question as referring to "donations"

to The Requester rather than to "contributions" as the word is defined in Chapter 10A. This is not to say, of course, that donations to The Requester may not also be contributions under Chapter 10A. This is, in fact, the issue raised by the question.

On October 14, 2011, the Board adopted the following Statement of Guidance regarding the application of the Chapter 10A definition of "contribution":

1. Money designated for ballot question expenditure purposes

Money received by an association is a contribution if the contributor specified that the money was given to support the association's campaign to promote or defeat the ballot question.

2. Money given in response to a solicitation including an express request

Money given in response to a solicitation that requests money for the express purpose of supporting the association's campaign to promote or defeat the ballot question is a contribution.

An express request is a request that asks for money and states that the money is sought to support the ballot question campaign.

3. Money given in response to a solicitation that is the functional equivalent of an express request.

Money given in response to a solicitation that meets the all of the following criteria is a contribution:

- A) The solicitation is made after the date of final enactment by the legislature of the bill placing the subject ballot question on the general election ballot;
- B) The solicitation clearly identifies the subject ballot question; and
- C) The solicitation is susceptible to no reasonable interpretation other than that money given as a result of the solicitation will be used to promote or defeat the subject ballot question.

For the purpose of determining whether a solicitation clearly identifies the ballot question, the "solicitation" includes:

- A) For a mailed solicitation: the solicitation itself and any material included in the same mailing;
- B) For an electronically transmitted solicitation: the electronic communication itself and any attachments to the communication. An electronic solicitation also includes material accessed directly by a hyperlink in the solicitation or its attachments. Intermediate hyperlinks inserted merely to subvert the direct link requirement will not be considered when examining whether the solicitation directly links to a page that refers to the subject ballot question;

C) For a website based solicitation: the solicitation form itself and all other pages of the association's website.

Limitation

It is the Board's intention that the definitions of "contribution" set forth in this Guidance be applied in favor of excluding transfers of money from the definition of "contribution" in any case where it is not clear that all of the specified criteria have been met.

From the facts provided in your statement of the issue, it is clear that parts 1 and 2 of the definition of "contribution" do not apply to the transactions about which you inquire.

With respect to the application of the definition of "contribution" in part 3 of the guidance, requirements A and B are met. That is, the question has already been placed on the ballot by the legislature and, according to the premise of the question, the solicitation will identify the subject of the ballot question.

However, part C of the definition requires that the solicitation be "susceptible to no reasonable interpretation other than that money given as a result of the solicitation *will be used* to promote or defeat the subject ballot question." (Emphasis added.)

Without specific text or specific web pages to examine, the Board's evaluation of the fact situation must be, as is the question itself, somewhat hypothetical. However, the Board has made it clear that when determining whether money given is a "contribution" its guidance is to be applied in favor of excluding transfers where the requirements of the definition are not clearly met.

Under the question presented, the solicitation suggests that money raised could be used for any of a range of the association's various projects and activities. While donors may assume that some or even all of their donation will be used to promote or defeat a ballot question, and the association may actually end up using it for that purpose, disclosure requirements are not based on assumptions.

The Board concludes that the hypothetical solicitation is subject to interpretations other than that any donations resulting from it *will*, in fact, be used to promote or defeat a ballot question. Thus, funds received as a result of the hypothetical solicitation presented in the question would not be "contributions" under Chapter 10A. While the donors may be subject to underlying source disclosure as discussed in other sections of this opinion, the donations are not reportable as "contributions," which must be itemized when they are more than \$100.

Issued May 1, 2012

/s/ Greg McCullough

Greg McCullough, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes

10A.01 DEFINITIONS

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Subd 18b. **Independent expenditure political fund.** "Independent expenditure political fund" means a political fund that makes only independent expenditures and disbursements permitted under section 10A.121, subdivision 1.

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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.12 POLITICAL FUNDS.

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Subd. 5. **Dues or membership fees.** An association may, if not prohibited by other law, deposit in its political fund money derived from dues or membership fees. Under section 10A.20, the treasurer of the fund must disclose the name of any member whose dues, membership fees, and contributions deposited in the political fund together exceed \$100 in a year.

10A.121 INDEPENDENT EXPENDITURE POLITICAL COMMITTEES AND INDEPENDENT EXPENDITURE POLITICAL FUNDS

Subdivision 1. **Permitted disbursement.** An independent expenditure political committee or an independent expenditure political fund, in addition to making independent expenditures, may:

- (1) pay costs associated with its fund-raising and general operations;
- (2) pay for communications that do not constitute contributions or approved expenditures; and
- (3) make contributions to other independent expenditure political committees or independent expenditure political funds.

10A.27 CONTRIBUTIONS

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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.