

State of Minnesota
Campaign Finance & 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: Campaign finance laws applicable to specific form of political fund

ADVISORY OPINION 427

SUMMARY

An association may accept contributions from individuals into its political fund for the purpose of making its own contributions to Minnesota candidates. The association may permit donors to its political fund to indicate their preferences for candidates that the association should support. If donor preferences are not a direction or the equivalent of a direction to the association as to the candidates to whom it should donate, earmarking does not occur.

FACTS

As the attorney for an association (the Association), you ask the Campaign Finance and Public Disclosure Board for an advisory opinion. Your request included a number of statements of assumed facts. Only those assumed facts that are necessary to answer your questions are included in this opinion.

1. The Association is a corporation that is has been granted tax exempt status under IRC section 504(c)(4).
2. The Association plans to register a Minnesota political fund.
3. A separate association, which is a political organization that has registered with the Internal Revenue Service under Internal Revenue Code section 527 operates a website where it provides services through which candidates and associations can solicit and accept contributions.
4. The Association will use the section 527 organization's website to allow individuals to make contributions to its political fund.

Question One

Does Minnesota law permit the Association to establish and register a political fund to accept contributions from individuals for Minnesota state candidates, but not earmarked for any particular Minnesota candidate?

Opinion

According to the assumed facts, the Association is a 501(c)(4) nonprofit corporation. By definition, the major purpose of a 501(c)(4) association cannot be to influence the nomination or election of candidates.

In Minnesota a political committee is an association whose major purpose is to influence the nomination or election of candidates or to promote or defeat a ballot question. Thus, under the assumed facts, the Association is not a political committee.

An association that is not a political committee, a party unit, or a candidate's principal campaign committee, may accept contributions and make donations to influence the nomination or election of candidates in Minnesota. If it does so, the accumulation of money raised or spent for that purpose is referred to as the association's political fund.

You should note that the Association does not "establish" a political fund. The Association's political fund is simply the pool of money raised or spent to influence the nomination or election of candidates. The political fund exists without the Association doing anything other than raising or spending money to influence the nomination or election of candidates. Registering the political fund means notifying the Board that the Association is raising or spending money to influence the nomination or election of candidates or to promote or defeat a ballot question and will be disclosing the receipt and use of that money.

Your request states that contributions to the Association's political fund will not be earmarked for any particular candidate. Minnesota Statutes section 10A.16, reproduced at the end of this opinion, prohibits the solicitation or acceptance of earmarked contributions.

Question Two

Does Minnesota law permit the Association's political fund to solicit undesignated contributions from contributors, while permitting contributors to indicate the candidates they would prefer the Association's political fund to support by selecting one or more Minnesota state candidates from a list of candidates? These choices would be considered mere preferences for support, but would not be binding on the Association's political fund.

Opinion

The question is posed in a way that suggests that the Association's political fund is an entity separate from the Association itself. An association's political fund is an accumulation of money that the association tracks through an accounting mechanism. It is not an entity separate from the association itself.

The Board recognizes that disclosure by an association with a political fund is typically done in the name given by the association to its political fund and, further, that associations often refer to themselves by their political fund name when communicating about contributions or expenditures that will be part of their political fund. This shorthand form of reference is a common and accepted practice. However, it is important for associations themselves to understand that referring to the political fund as if it were a separate entity is simply an alternative form of reference to the association itself and to the accounting mechanism that the association uses to keep track of the money that constitutes its political fund account.

Thus, the question in this section actually asks if the Association, disclosing its activities through its political fund, may engage in the specified actions.

If the Association solicits contributions to support Minnesota candidates, those contributions become a part of its political fund and must be reported on its political fund report. Contributions to candidates made by the Association and reported through its political fund account are contributions from the Association, not from the underlying donors to the political fund account.

The Association may solicit donor preference information from its Minnesota donors without a resulting earmarking violation if donor preference indications do not result in donors directing their contributions to specific candidates.

If examination of the facts in the real world results in a conclusion that donor preference indications are the equivalent of directives to make contributions, an earmarking violation would result.

Question Three

May the Association's political fund make contributions to Minnesota state candidates guided by the preferences indicated by individual contributors?

Opinion

The Association may make contributions to Minnesota state candidates without violating Minnesota's prohibition on earmarking if the expression of preferences by contributors to the Association's political fund is merely a guide and does not constitute a direction by donors as to where their money should be used. Whether the donors' preferences are merely a guide or are a direction of spending will depend on the facts in the real world and cannot be determined conclusively in the context of a hypothetical question.

Question Four

In addition to the questions reproduced above, your request includes a section titled "What does Minnesota law require?" This section purports to describe Minnesota campaign finance law and includes a summary that you have compiled of registration and reporting requirements for political funds in Minnesota. Your fourth question asks if the summary contains any errors.

Relevant Statutes

10A.01 Definitions

. . .

Subd. 27. **Political committee.** "Political committee" means an association whose major purpose is to influence the nomination or election of a candidate or to promote or defeat a ballot question, other than a principal campaign committee or a political party unit.

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.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.