

**MINNESOTA STATE ETHICAL PRACTICES BOARD**

**41 STATE OFFICE BUILDING**

**SAINT PAUL, MINNESOTA 55155**

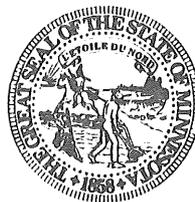
**612-296-5148**

**ADVISORY OPINIONS**

under Minn. Stat. §10A.02, subd. 12

JANUARY 1, 1982 - JUNE 1, 1984

NUMBERS 82 - 89



JUNE, 1984

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**ABOUT ADVISORY OPINIONS** -----

- . The Ethical Practices Board is authorized to issue advisory opinions on the requirements of the Ethics in Government Act, Minn. Stat. Ch. 10A, enacted in 1974, (see Minn. Stat. §10A.02, subd. 12) and the Hennepin County Disclosure Law (see Laws of 1980, Chapter 362, Section 15). Individuals or associations may ask for advisory opinions about these laws to guide their own conduct.
- . A request for an advisory opinion is published in the State Register before action is taken by the Board to approve an opinion. Public comment is invited. A summary of each approved advisory opinion is published in the State Register; full texts of opinions are available for public inspection in the Board office, 41 State Office Building, St. Paul, Minnesota.
- . An advisory opinion lapses the day the regular legislative session adjourns in the second year following the date of the opinion (Minn. Stat. §10A.02, subd. 12).

**ABOUT THE BOARD** -----

Purpose

- . To maintain public confidence in the integrity of government through public disclosure and public financing of candidates through administration of the Ethics in Government Act, Minn. Stat. Ch. 10A.

Members

- . Six member citizen body;
- . Appointed by the governor; confirmed by a 3/5th vote of both houses of the legislature;
- . One former legislator of each major party;
- . Two individuals who have not been a public official nor a political party officer in the last three years;
- . No more than three members of the same political party.

Issued to:

Senator Eric Petty  
4858 Lyndale Avenue South  
Minneapolis, MN 55409

Approved:

March 26, 1982

**RE: Campaign Finance: Constituent Services**

## **ADVISORY OPINION #82**

### **SUMMARY**

82. After reapportionment, the principal campaign committee of a legislator must consider old and new district boundaries as well as the period of time in which services are provided when reporting expenses as campaign expenditures or noncampaign disbursements in the first election year for the office held.

### **FACTS**

As a legislator, you plan to publish and distribute a report to inform people about legislative action. You intend to distribute the report within 60 days after the legislature adjourns sine die in the election year for your office. The report will be paid for by your principal campaign committee. Fifty percent of the reports will be distributed to households within the legislative district you currently represent and fifty percent will be distributed to households not within your district, but within your new, reapportioned district where you will seek election. You ask the following questions:

1. Should you report the entire expenditure as a noncampaign disbursement, or should you report 50 percent as campaign expenditure and 50 percent as a noncampaign disbursement; and
2. If the reports distributed outside your present district constitute a noncampaign disbursement, should the expenses be listed as "constituent services" or as "miscellaneous"?

### **OPINION**

Expenses paid by a legislator's principal campaign committee to publish and distribute to constituents a legislative report within 60 days after adjournment of the legislature sine die in the election year for the office held should be reported as a constituent service noncampaign disbursement. Minn. Stat. §10A.01, subd. 10c.

A legislator's constituent is someone whom the legislator presently represents as an elected official. Accordingly, if 50% of the legislative reports are distributed to persons within a legislator's present district and 50% to persons outside the legislator's present district, i.e., the legislator's new, reapportioned district, then only 50% of the expenses shall be reported as a noncampaign disbursement.

The cost of the legislative reports distributed to persons in the reapportioned district shall be reported as a campaign expenditure. Minn. Stat. §10A.01, subd. 10.

In view of the Board's opinion regarding Question No. 1, Question 2 need not be addressed.

Issued to:

Mr. John W. Ardoyno, Treasurer  
Libertarian Party of Minnesota  
14150 Guthrie Avenue  
Apple Valley, MN 55124

Approved:

January 13, 1983

**RE: Campaign Finance: Contributors to Political Party Committee**

### **ADVISORY OPINION #83**

#### **SUMMARY**

83. A political party committee of a major or a minor political party shall disclose contributors whose contributions to the committee in aggregate under Minn. Stat. §10A.20, subd. 3(b) exceed \$50 (legislative offices) or \$100 (statewide offices only) in a calendar year regardless of whether the committee makes contributions to any candidates.

#### **FACTS**

The Libertarian Party of Minnesota is a "minor political party" under whose name candidates have filed for statewide office and legislative office. Minn. Stat. §10A.01, subd. 13. The Libertarian Party established a "political committee" within fourteen days after receiving contributions in excess of \$100. Minn. Stat. §§10A.01, subd. 15 and 10A.14.

As the Libertarian Party treasurer, you have informed the Ethical Practices Board that your party does not support individual candidates in any elections. All contributions received since the party was organized have been used for educational activities, convention expenses, office maintenance and similar expenditures. You interpret Minn. Stat. §10A.20, subd. 3(b) as meaning that only if you contribute to individual candidates must your party itemize individual contributors. You ask the Board the following questions:

1. Is the Libertarian Party of Minnesota released from the reporting requirement under Minn. Stat. §10A.20, subd. 3(b) to list individual contributors when it does not contribute to individual candidates?
2. If the party does not contribute to individual candidates and the party is required to disclose individual contributors, at what amount is disclosure required?

#### **OPINION**

Minn. Stat. Ch. 10A provides that a major political party as defined in sections 10A.01, subd. 12 and 10A.27, subd. 4, and a minor political party as defined in sections 10A.01, subd. 13 and 10A.27, subd. 4, shall establish a political committee under Minn. Stat. §§10A.01, subd. 15 and 10A.14 within fourteen days after receiving over \$100 in contributions, regardless of whether the party makes contributions to any individual candidates. The law goes on to say that a political committee shall file reports which disclose contributors whose contributions in aggregate during a calendar year exceed \$50 or \$100. Minn. Stat. §10A.20, subd. 3(b). Therefore, even though a minor party committee does not contribute to candidates, the committee must itemize major contributors.

To establish whether the reporting threshold should be in excess of \$50 or \$100, the Board believes that it is reasonable to use the standard provided in Minn. Stat. §10A.20, subd. 3(b). The Board interprets this section to mean that if any of a political party's candidates are legislative candidates, the party's political committee shall disclose contributors whose contributions in aggregate in a calendar year exceed \$50. If a political party's candidates seek only statewide office, the contributors shall be disclosed at the over \$100 threshold.

Issued to:

Approved:

Hon. Mark Andrew  
Hennepin County Commissioner  
2400 Government Center  
Minneapolis, MN 55487

August 11, 1983

**RE: Hennepin County Disclosure**

## **ADVISORY OPINION #84**

### **SUMMARY**

84. Contributions to and payments from a legal defense fund are not subject to the registration and reporting requirements of Minn. Laws 1980 Chapter 362.

### **FACTS**

You are an elected official in Hennepin County with a registered principal campaign committee which reports to the County Auditor under Laws of 1980, Ch. 362.

You owe a personal debt for legal services incurred in the successful defense of a fair campaign practices suit after your election in 1982. A number of people have suggested that you establish a separate legal defense fund to assist you in paying this personal obligation.

Under Ch. 362, Sec. 15, subd. 1(b), you ask the Board to answer these questions:

1. May a legal defense fund be established separately from your principal campaign committee and, if so, what are the reporting obligations, if any, of such a fund; and
2. To what extent are the provisions of Minn. Stat. §210A.01 et seq incorporated into Ch. 362, and what limitations or restrictions would be applicable to a legal defense fund if such an incorporation is found?

### **OPINION**

1. A candidate's payments for legal services are not campaign expenses of that candidate. Minn. Stat. §§10A.02, subd. 10c (a); 210A.41 (1982).

Contributions to a legal defense fund established by a candidate are not contributions subject to the registration and reporting requirements of Minn. Laws 1980, Ch. 362.

2. Section 210A.41 of the Fair Campaign Practices Act applies to all candidates as defined in Minn. Stat. §210A.01, subd. 3 (1982) as amended by 1983 Minnesota Laws, Ch. 247, sec. 92.

Issued to:

Approved:

John H. Daniels, Jr., Esq.  
Willeke & Daniels  
Attorneys and Counselors at Law  
925 Soo Line Building  
Fifth and Marquette  
Minneapolis, MN 55402

October 6, 1983

**RE: Economic Interest: Definition of "immediate family member"**

### **ADVISORY OPINION #85**

#### **SUMMARY**

85. For the purposes of economic interest disclosure, "immediate family member" includes certain individuals related to a public official by blood, adoption, and marriage.

#### **FACTS**

You are a member of the Minnesota Racing Commission. You have filed with the Ethical Practices Board a Statement of Economic Interest under Minn. Stat. §10A.09, subd. 5(3) (Supp. 1983), and have listed securities in pari-mutuel horse racing in California held by Mrs. June Daniels, the second wife of your deceased grandfather.

Under Minn. Stat. §10A.02, subd. 12, you ask the Board to answer this question: Is Mrs. Daniels an "immediate family member" within the meaning of Section 10A.09, subd. 5(3)?

#### **PERTINENT STATUTES**

Sec. 10A.09, subd. 5(3), (Minnesota Statutes 1983 Supplement): A listing of any investments, ownership, or interests in property connected with pari-mutuel horse racing in the United States and Canada, including a race horse, in which he directly or indirectly holds a partial or full interest or an immediate family member holds a partial or full interest.

Sec. 500.24, subd. 2(c) (Minnesota Statutes 1982): "Family farm corporation" means a corporation founded for the purpose of farming and the ownership of agricultural land in which the majority of the voting stock is held by and the majority of the stockholders are persons or the spouses of persons related to each other within the third degree of kindred according to the rules of civil law, and at least one of said related persons is residing on or actively operating the farm, and none of whose stockholders are corporations; provided that a family farm corporation shall not cease to qualify as such hereunder by reason of any devise or bequest of shares of voting stock.

Sec. 645.45 (8) (Minnesota Statutes 1982): "Child" or "children" includes children by birth or adoption.

26U.S.C. §9004 (d) and (e) (Federal Election Campaign Laws):

(d) Expenditures from personal funds. - In order to be eligible to receive any payment under section 9006, the candidate of a major, minor, or new party in an election for the office of President shall certify to the Commission, under penalty of perjury, that such candidate will not knowingly make expenditures from his personal funds, or the personal funds of his immediate family, in

connection with his campaign for election to the office of President in excess of, in aggregate, \$50,000. For purposes of this subsection, expenditures from personal funds made by a candidate of a major, minor, or new party for the office of Vice President shall be considered to be expenditures by the candidate of such party for the office of President.

(e) Definition of immediate family. - For purposes of subsection (d), the term "immediate family" means a candidate's spouse, and any child, parent, grandparent, brother, half-brother, sister, or half-sister of the candidate, and the spouses of such persons.

26U.S.C. §0935 (a) and (b) (Federal Election Campaign Laws):

(a) Expenditure limitations. - No candidate shall knowingly incur qualified campaign expenses in excess of the expenditure limitation applicable under section 320(b)(1)(A) of the Federal Election Campaign Act of 1971, and no candidate shall knowingly make expenditures from his personal funds, or the personal funds of his immediate family, in connection with his campaign for nomination for election to the office of President in excess of, in the aggregate, \$50,000.

(b) Definition of immediate family. - For purposes of this section, the term "immediate family" means a candidate's spouse, and any child, parent, grandparent, brother, half-brother, sister, or half-sister of the candidate, and the spouses of such persons.

#### OPINION

The provisions of the Ethics in Government Act, Minnesota Statutes Chapter 10A, which require candidates for elective office, elected officials, and certain appointed public officials to file financial disclosure statements are reasonably aimed at the Act's purpose of assuring people that financial interests of candidates or holders of public office present neither a conflict nor the appearance of a conflict with the public trust they have agreed to serve.

In the opinion of the Board, the requirement to disclose investments or interests in property connected with pari-mutuel horse racing held by public officials or their immediate family members should be broadly construed in order to administer the disclosure provisions of the Act.

The Board believes that the term "immediate family member" should include the individual's spouse, any child, parent, grandparent, brother, half-brother, sister, half-sister, and the spouses of any of them.

Since Mrs. Daniels is the spouse of your deceased grandfather, you were correct in listing her holding in a California racetrack.

Issued to:

Steven Zupke, Administrator  
Minnesota Trial Lawyers Political Action Committee  
906 Midwest Plaza East  
Minneapolis, MN 55402

Approved:

January 12, 1984

**RE: Contribution Plan**

### **ADVISORY OPINION #86**

#### **SUMMARY**

86. A reverse checkoff system may be used by a membership association to increase the number of contributors to the association's political fund if:

1. a member can checkoff on the dues statement to indicate that the member does not agree to make any contribution to the association's political fund; and
2. a member is notified of protection from economic reprisals under Minn. Stat. Ch. 10A; and
3. dues paid from corporate funds are separated from dues paid by non-corporate funds.

#### **FACTS**

You are the administrator of Minnesota Trial Lawyers Political Action Committee (TRIAL-PAC), the registered political fund of Minnesota Trial Lawyers Association (MTLA), a nonprofit corporation. In accordance with the Minnesota Supreme Court's opinion in MACI v. Foley 316 N.W. 2d 524 (Minn. 1982), MTLA has chosen to create this political fund. A political fund may receive financial support from membership dues under Minn. Stat. §10A.12, subd. 5.

In an effort to increase the number of contributors to TRIAL-PAC within its membership, MTLA is considering the following procedures:

1. MTLA would provide a reverse checkoff system for TRIAL-PAC contributions on MTLA's annual membership dues.
2. Under this system the amount of dues paid by each member would remain the same, however a predetermined portion of each member's dues would be directed to TRIAL-PAC unless the member declines.
3. MTLA would establish a separate trust account for the purpose of screening all membership payments to ensure that no corporate money enters the political fund. Members whose dues are paid by employer-corporations would be asked to enclose a personal check for TRIAL-PAC, unless they exercise their option and decline participation in the political fund.

You ask the Board to determine whether the reverse checkoff system which MTLA is considering is permitted under Minn. Stat. Ch. 10A.

## OPINION

Since Minn. Stat. Ch. 10A does not preclude the deposit of members' dues in an association's political fund, Minnesota Trial Lawyers Association may use a dues checkoff plan on membership dues to increase the number of contributors to its political fund.

However, MTLA's reverse checkoff plan must:

1. offer each member the opportunity to decide whether a pre-determined amount of the member's annual dues will be directed to MTLA's political fund, TRIAL-PAC; and
2. provide notice to each member that the member is protected against economic reprisals under Minn. Stat. §10A.20, subd. 11, which provides, in part

"No person or association shall engage in economic reprisals or threaten loss of employment or physical coercion against any person or association because of that person's or association's political contributions or political activity. ..."; and

3. separate membership dues paid by corporations from membership dues which are paid by individuals from noncorporate funds.

Issued to:

Vernon T. Hoppe  
Director of Property Taxation  
Hennepin County  
A606 Government Center  
Minneapolis, MN 55487

Approved:

March 9, 1984

**RE: Hennepin County Disclosure Law - Administration**

**ADVISORY OPINION #87**

**SUMMARY**

87. A political committee or political fund which is registered with the Ethical Practices Board may terminate registration with Hennepin County.

**FACTS**

As the official responsible under law for the administration of the election laws in Hennepin County, you are the filing officer under Laws of Minnesota 1980, Chapter 362. The Kroening Volunteer Committee was required to register with Hennepin County because the committee made a contribution of \$300 to the Citizens for Daugherty, a principal campaign committee registered with Hennepin County.

The Kroening Committee, principal campaign committee of a state senator which is registered with the Ethical Practices Board, would like to terminate registration with Hennepin County because the committee does not anticipate contributing to another candidate, under Chapter 362. However, the Kroening Committee does not meet the termination requirements imposed by Chapter 362, section 8, subdivision 4.

You ask the Board to answer this question: May you do an administrative termination on request by state committees who inadvertently contribute to a candidate who falls under Chapter 362?

**OPINION**

A political committee or political fund which continues to report to the Ethical Practices Board under Minn. Stat. §10A.20 may terminate registration with Hennepin County by sending written notice to the filing officer that the committee or fund:

1. does not anticipate making additional contributions to candidates or committees registered with Hennepin County; and
2. shall re-register with Hennepin County within 14 days after the date on which the committee or fund makes another contribution to a candidate or committee as defined in Chapter 362.

The filing officer shall furnish to the Board a copy of any notice of registration termination filed by a committee or fund which is registered with the Board.

Issued to:

Approved:

Glenn S. Dorfman  
Director of Governmental Affairs  
Minnesota Association of Realtors  
5501 Green Valley Drive  
Bloomington, MN 55437

May 18, 1984

**RE: Reimbursement for Administrative Costs**

### **ADVISORY OPINION #88**

#### **SUMMARY**

88. A political committee must reimburse an unregistered association for the association's administrative costs and expenses in excess of \$100 in any calendar year incurred on behalf of the political committee.

#### **FACTS**

You are the governmental affairs director of Minnesota Association of Realtors (MAR), a nonprofit corporation, which has not registered a political fund with the Ethical Practices Board. MAR has been reimbursed for administrative costs incurred on behalf of Real Estate Political Action Committee (REPAC), a political committee registered with the Board. The costs reimbursed have included services of the staff of MAR, ads in the monthly publication of MAR, and administrative staff time or other costs incurred by local boards affiliated with MAR. In all instances, REPAC has reimbursed MAR for administrative costs incurred on its behalf by MAR or its affiliated boards.

In the Minnesota Supreme Court's opinion in MACI v. Foley, 316 N.W.2d 524 (Minn. 1982), the Court held that Minn. Stat. §210A.34 declaring it unlawful for corporations to make contributions to promote or defeat the election of any candidate to any political office, does not apply to nonprofit corporations.

You ask the Board to answer the following question:

Is REPAC, as a duly registered political committee, required to reimburse MAR, a nonprofit corporation, for administrative costs and expenses incurred by MAR or its affiliated boards on behalf of REPAC?

#### **OPINION**

The treasurer of REPAC cannot accept contributions or donations in kind of over \$100 from any association not registered with the Ethical Practices Board unless the association furnishes the disclosure required by law. Minn. Stat. §10A.22, subd. 7. Since MAR has not registered a political fund with the Board, REPAC must continue to reimburse MAR and any of its affiliated boards for the administrative costs and expenses they incur on behalf of REPAC, in excess of \$100 in aggregate in any calendar year. If MAR or any affiliated board establishes a political fund under Minn. Stat. §§10A.01, subds. 3 and 16; 10A.12; and 10A.14, then REPAC may accept contributions and donations in kind in excess of \$100 from that political fund.

Issued to:

Hon. Joel Jacobs  
State Representative  
2806 116th Lane NW  
Coon Rapids, MN 55433

Approved:

May 18, 1984

**RE: Campaign Finance Disclosure**

### **ADVISORY OPINION #89**

#### **SUMMARY**

89. Expenditures by a principal campaign committee to purchase a typewriter or computer with accompanying software are reportable as campaign expenditures for the purposes of the expenditure limits in Minn. Stat. §10A.25.

#### **FACTS**

You are a state representative who plans to file for election in 1984. Your principal campaign committee is planning to purchase some equipment (typewriter/computer) in calendar year 1984.

You ask the Board to answer the following questions:

1. Would the expenditure for the equipment be considered a non-campaign disbursement if purchased in 1984
  - a) prior to the general election, November 6, 1984, or
  - b) after the general election, November 6, 1984, but before January 1, 1985?
2. Would the Board's response to Question 1 apply to the purchase of software, in the event the equipment purchased is a computer?

#### **OPINION**

Generally, the funds from which a candidate's principal campaign committee may elect to purchase equipment for the committee have accumulated as the result of contributions made to the committee to influence the nomination or election of the candidate. Minn. Stat. §§10A.01, subd. 7, 10A.19.

In the opinion of the Board, expenditures from contributions to a candidate's committee to purchase committee equipment are made for the purpose of influencing the nomination or election of the candidate. Minn. Stat. §10A.01, subd. 10, requires that the expenditure by the committee to purchase equipment is considered to be incurred in the year in which the equipment is used.

The Board concludes that the expenditure by a candidate's committee, from contributions to the committee, to purchase a typewriter or a computer with accompanying software is a campaign expenditure, for the purposes of the expenditure limits in Minn. Stat. §10A.25. Although the committee may continue to use the equipment in subsequent years, the law requires the committee to report the purchase only in the year the equipment is first used. Minn. Stat. §10A.20.

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STATE OF MINNESOTA  
STATE ETHICAL PRACTICES BOARD

41 STATE OFFICE BUILDING  
ST. PAUL, MINNESOTA 55155-1289  
PHONE: (612) 296-5148

Approved by the Ethical Practices Board  
November 15, 1984

Issued to:

Walter J. Duffy, Jr., Treasurer  
(Rudy) Perpich Volunteer Committee  
2300 Multifoods Tower  
33 South Sixth Street  
Minneapolis, MN 55402

RE: Campaign Expenditures

ADVISORY OPINION #90

SUMMARY

90. Volunteer services by a state officeholder on behalf of legislative candidates need not be allocated to or reported by any candidate.

FACTS

You are the treasurer of Governor Perpich's principal campaign committee. In 1984 the governor has taken a number of airplane trips in order to appear on behalf of legislative candidates in their election campaigns. The expenses incurred by the Governor on these trips are reported through the Governor's campaign committee as campaign expenses.

You ask the Board to answer the following question:

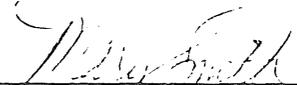
What, if any, portion of the Governor's transportation expenses should be allocated to the candidates as expenses incurred on behalf of the individual candidates and therefore reportable by them?

You state that you are not referring to the situation where the Governor is transporting other candidates.

OPINION

The Board agrees that the Governor's expenses for the airplane trips which are paid by his principal campaign committee are reportable as campaign expenses of his committee. However, in the opinion of the Board, the Governor's volunteer service on behalf of legislative candidates is neither a contribution nor an expenditure which must be allocated to or reported by any candidate. Minn. Stat. §10A.01, subs. 7 and 10(c).

Dated: 11/15/84

  
Mary Smith, Chairman



**STATE OF MINNESOTA  
STATE ETHICAL PRACTICES BOARD**

41 STATE OFFICE BUILDING  
ST PAUL, MINNESOTA 55155-1289  
PHONE: (612) 296-5148

Approved by the Ethical Practices Board  
January 31, 1985

Issued to:

L. Ashley Whitesell, Jr., M.D., Chairman  
Minnesota Medical Political Action Committee (MINNPAC)  
P. O. Box 14469  
Minneapolis, MN 55414

**RE: Replacement of Lost Contribution Check**

**ADVISORY OPINION #91**

**SUMMARY**

91. When a candidate has received and acknowledged a political committee's contribution check in an election year, but lost the check before it could be deposited, the political committee should be allowed to replace the intended contribution and the candidate should be allowed to accept the replacement contribution even though both actions occur in a nonelection year.

**FACTS**

You are the chairman of the Minnesota Medical Political Action Committee (MINNPAC). In 1984, your committee personally delivered a contribution check to a state representative candidate who filed for election in 1984 and received the candidate's written acknowledgement of the contribution. However, the contribution check was not presented to your committee's depository for payment prior to December 31, 1984, when your committee treasurer's books closed for election year 1984. Now, in nonelection year 1985, MINNPAC desires to honor the contribution authorized in 1984 and issue a replacement check.

You ask the Board the following questions:

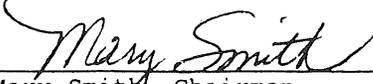
1. May MINNPAC issue a check in 1985 to a candidate's principal campaign committee to replace a check which was written and delivered in 1984 but lost by the candidate before the check could be deposited in the candidate's committee's account?
2. May a candidate's principal campaign committee accept a replacement check in 1985 for a check originally issued in 1984 in an amount in excess of the nonelection year contribution limit?

**OPINION**

A political committee must report the sum of all contributions made to candidates and must itemize contributions to candidates which, in aggregate, exceed \$100 during a calendar year. Minn. Stat. §10A.20, subs. 2 and 3(g). A contribution which is not presented for payment would be reported as "miscellaneous income" and, if over \$100, would be itemized on the periodic report in which the nonpayment occurred. Minn. Stat. §10A.20, subs. 2 and 3(e).

A political committee may replace an uncashed contribution check to a candidate's principal campaign committee at any time. In a particular circumstance where, during an election year: (1) a contribution check in the sum of \$700 dollars was physically delivered to a candidate for the Minnesota House of Representatives by a political committee, (2) the candidate reported the contribution by telegram to the Board as required by Minn. Stat. §10A.20, subd. 5, (3) the candidate acknowledged the contribution by submission of a letter to the political committee and (4) the candidate loses the contribution check and neither the candidate nor the political committee reasonably discover the loss until January of a nonelection year, the political committee should be allowed to replace the intended contribution and the candidate should be allowed to accept the replacement contribution even though both actions occur in a nonelection year.

Issued: February 7, 1985

  
\_\_\_\_\_  
Mary Smith, Chairman  
Minnesota Ethical Practices Board



**STATE OF MINNESOTA  
STATE ETHICAL PRACTICES BOARD**

41 STATE OFFICE BUILDING  
ST PAUL, MINNESOTA 55155-1289  
PHONE: (612) 296-5148

Approved by the Ethical Practices Board  
August 9, 1985

Issued to:

Hon. Richard J. Cohen  
Attorney at Law  
200 City Place  
730 Hennepin Avenue  
Minneapolis, MN 55403

**RE: Campaign Contributions**

**ADVISORY OPINION #92**

**SUMMARY**

92. Principal campaign committees established by a candidate seeking more than one office must abide by applicable contribution limits, even in the repayment of a loan to one of the committees. One of the principal campaign committees should be allowed to return a contribution to a contributor to that committee more than 60 days after receipt and furnish disclosure of the transaction.

**FACTS**

You are a state representative who is about to commence a campaign to run for the state senate. You would like to conduct a great deal of your fund raising during calendar year 1985 in order to have it out of the way before the campaign. However, you would like to retain the option that, lacking support for the senate race, you would be able to run again for the house.

You ask the Board the following questions relative to raising money for the senate race versus the house race, the maintenance of separate campaign accounts, and what happens to such monies if unused:

1. What ability exists to transfer money from a senate committee to a house committee in the situation described?
2. Would there be any problem with returning campaign contributions to all the contributors to a senate committee subsequent to the 60 days after receipt with the proper reporting conducted?
3. You made a personal loan to your house committee. If you transfer to a senate race, is there any way you can raise money to pay back the loan to your house committee? Would this be done by maintaining the house committee and using it strictly for the purpose of paying back the loan or could you use the senate committee? Would there be any problem with simply having a loan paid back to you personally whether it's through a house or a senate

campaign?

**OPINION**

A candidate may permit his principal campaign committee to accept contributions from another principal campaign committee formed by that candidate in seeking another office to further his nomination or election to the other office. The candidate must ensure that the recipient committee abides by the applicable contribution limit for a political committee as imposed by Minn. Stat. §10A.27. Minn. Rules Part 4500.1400.

The return of a contribution to the contributor is deemed a noncampaign disbursement under Minn. Stat. §10A.01, subd. 10c (b). In the situation described, a principal campaign committee should be allowed to return a contribution to a contributor more than sixty days after its receipt provided the principal campaign committee furnishes to the Board a copy of the check which returned the contribution with the committee's report of receipts and expenditures for the reporting period in which the contribution was returned.

An agreement to make a loan to a particular political committee must be made in writing and must be reported by that committee on the appropriate schedule until repaid or forgiven. Minn. Stat. §10A.20, subd. 3(d); Minn. Rules Part 4500.0300. A committee shall not dissolve until it has settled all its debts. Minn. Stat. §10A.24. A house committee with a loan outstanding could continue to receive contributions up to the applicable contribution limit until sufficient funds would have accrued to repay the loan. Should a candidate's senate committee contribute to the house committee for this or any other purpose, the candidate must ensure that the house committee does not accept, in aggregate, in any year, more than the applicable contribution limit from the senate committee.

Issued: August 13, 1985

  
Martin J. McGowan, Chairman  
Minnesota Ethical Practices Board



**STATE OF MINNESOTA  
STATE ETHICAL PRACTICES BOARD**

41 STATE OFFICE BUILDING  
ST. PAUL, MINNESOTA 55155-1289  
PHONE: (612) 296-5148

Issued to:

Approved by the Ethical Practices Board  
October 24, 1985

Hon. Robert W. Mattson  
State Treasurer  
303 State Administration Building  
St. Paul, MN 55155

Re: Reporting Requirements

**ADVISORY OPINION #93**

**SUMMARY**

93. A statewide officeholder must disclose the costs of sending a written communication to the voters of a specific legislative district under certain circumstances.

**FACTS**

As State Treasurer, you indicate your intention to distribute a letter throughout Senate District 4 which you had sent to District 4's State Senator. You consider this letter to be informational and educational in nature and designed to inform voters in District 4 as to some of the activities in the Minnesota Legislature of District 4's State Senator.

You ask the Board to address the following question:

Do constituent communications of this type fall within the jurisdiction of the Board?

**OPINION**

Because a constitutional officer holds a statewide office, all residents of the state may be deemed to be constituents of the officeholder. The Board is not authorized to govern the use of funds allocated to constitutional officers, including communications with constituents. However, if more than \$100 from state funds or other funds is spent to influence the nomination or election of a candidate, registration with and reporting to the Board under Minn. Stat. §10A.14 and 10A.20 would be required.

For purposes of Minn. Stat. Ch. 10A, an individual remains a candidate until the candidate's principal campaign committee is dissolved as provided in Minn. Stat. §10A.24. Minn. Stat. §10A.01, subd. 5.

If an individual makes an independent expenditure within the meaning of Minn. Stat. §10A.01, subd. 10b, to influence the nomination or election of a candidate,

Advisory Opinion #93

Page two

disclosure is required. Minn. Stat. §10A.20, subs. 2, 3, and 6.

In the opinion of the Board, a written communication sent by a statewide officeholder to the voters of a particular legislative district may be considered an action to influence the nomination or election of a candidate in that legislative district when

- a) the name and office of the candidate are clearly identified in the communication; and
- b) the content of the communication is clearly addressed to the voters of that legislative district.

The Board concludes that the costs of sending a communication which meets these criteria must be disclosed, together with the source of the funds, in accordance with Minn. Stat. Ch. 10A. If the action is an independent expenditure, the written communication must bear on the front page in conspicuous type a statement that the activity is not approved by the candidate nor is the candidate responsible for it. Minn. Stat. §10A.17, subd. 4. The disclosure required under sec. 10A.20 must include a certified statement that the expenditure was made without the express or implied consent, authorization, request, suggestion, or in concert with or cooperation of any candidate, any candidate's principal campaign committee or agent. An independent expenditure is not a contribution to any candidate. Minn. Stat. §§10A.01, subd. 10b; 10A.20.

Dated: October 24, 1985

  
Martin J. McGowan, Chairman  
MINNESOTA ETHICAL PRACTICES BOARD



**STATE OF MINNESOTA**  
**STATE ETHICAL PRACTICES BOARD**  
625 NORTH ROBERT STREET  
ST. PAUL, MINNESOTA 55101-2520  
PHONE: (612) 296-5148

Issued to:

Approved by the Ethical Practices Board  
March 27, 1986

Hon. Fred C. Norton  
House Minority Leader  
267 State Office Building  
St. Paul, MN 55155

**Re: Constituent Services**

**ADVISORY OPINION #94**

**SUMMARY**

94. Costs of providing constituent services in 1986 paid by the principal campaign committee of a legislator or executive officeholder incurred on or before May 20, 1986, must be reported as noncampaign disbursements.

**FACTS**

As House Minority Leader, you note that Minn. Rules 4500.3100, subpts. one - four, allow officeholders a period of 60 days following adjournment of the legislature in an election year to provide constituent services through their principal campaign committees and report these costs as noncampaign disbursements. You furnish the March 19, 1986, Attorney General's opinion that sine die adjournment of the Legislature requires action by both the House and the Senate. The House voted to adjourn on March 18, 1986. In the opinion of the Attorney General, final adjournment of the 1985-1986 legislative session will occur upon the final sine die adjournment of the Senate. The Senate adjourned sine die on March 21, 1986.

You ask the Board to specify when the 60-day time period begins and expires for the 1986 election year.

**OPINION**

"Noncampaign disbursement" includes services for a constituent by a member of the legislature or a constitutional officer in the executive branch performed from the beginning of the term of office to 60 days after adjournment sine die of the legislature in the election year for the office held. Minn. Stat. §10A.01, subd. 10c(f).

Accordingly, Minn. Rules pt. 4500.3100 directs the treasurer of an officeholder's campaign committee to disclose certain expenses for constituent services in nonelection years and in election years.

When the period of time for the performance of an act is fixed by law, the

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March 27, 1986

time is calculated by excluding the first day and including the last day of the prescribed period. Minn. Stat. §645.15.

In the opinion of the Board, the 60-day period in the 1986 election year began on March 22, 1986, and will end on May 20, 1986. Minn. Stat. §§10A.01, subd. 10c(f), 645.15; Minn. Rules pt. 4500.3100.

Dated: March 29, 1986

  
Martin J. McGowan, Chairman  
Ethical Practices Board

ETHICAL PRACTICES BOARD . 625 N. Robert St. . St. Paul, MN 55101-2520

Issued to:  
David L. Sasseville  
Lindquist & Vennum  
4200 IDS Center  
Minneapolis, MN 55402-2205

RE: Lobbyist Disbursement Report

### ADVISORY OPINION #95

#### SUMMARY

95. Because reference to "rate setting, power plant and powerline siting" in Minn. Stat. S 10A.01, subd. 2, is not modified by "Ch. 116J", a lobbyist's attempts to influence rate setting by an executive branch agency must be reported under Minn. Stat. S 10A.04.

#### FACTS

You are an attorney with Lindquist & Venum, which is local counsel to US Sprint Communications Co. (Sprint). Although you have been registered with the Board for several years as a lobbyist representing Sprint, it is your opinion that you are not a lobbyist within the meaning of "lobbyist", as defined at Minn.Stat.S 10A.01, subd. 11. Your activity on behalf of Sprint has been in connection with non-rulemaking contested cases before the Public Utilities Commission (PUC) to which Sprint was a party. The contested cases involved investigations and miscellaneous dockets, rather than rulemaking or rate setting proceedings.

You ask the Board the following questions:

1. Is the clause "except in cases of rate setting" in subd. 2 of Minn.Stat.S 10A.01 modified by the reference to Ch. 116J or does it apply to all administrative rate setting procedures?
2. Do your activities on behalf of Sprint require registration and reporting as a lobbyist under Minn. Stat. SS 10A.01, subd. 11, and 10A.03 - 10A.04?

#### OPINION

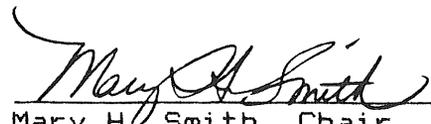
An individual who is engaged for pay who spends more than five hours in any month for the purpose of attempting to influence administrative action must register with the Board as a lobbyist. Minn. Stat. SS 10A.01, subds. 2 and 11, and 10A.03.

Since rate setting and power plant and powerline siting have not appeared in Ch. 116J, or its predecessor Ch. 116H, the Board concludes that reference in Minn. Stat. S 10A.01, subd. 2, to rate setting, power plant and powerline siting is not modified by reference to Ch. 116J in that citation.

Consequently, attempts by an individual or an association to influence action by an administrative agency in cases of rate setting, power plant and powerline siting, and granting of certificates of need under Ch. 116J would require registration of a lobbyist, when the requirements imposed at Minn. Stat. S 10A.01, subd. 11 are met.

Should the contested cases before the PUC to which you refer involve investigations or miscellaneous dockets that pertain to rate setting or rulemaking, you are advised to continue your registration as a lobbyist. You may terminate your registration by filing a termination report with the Board at any time your activities cease to meet the definition of "lobbyist". Minn. Stat. SS 10A.01, subds 2 and 11; 10A.04.

Issued: April 10, 1987

  
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Mary H. Smith, Chair  
Ethical Practices Board

