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## ADVISORY OPINIONS

(Under Minn. Stat. § 10A.02, Subds. 8 and 12)

October 1, 1996 - June 30, 1997

Numbers 249 - 272

JUNE 30, 1997

### MINNESOTA CAMPAIGN FINANCE & PUBLIC DISCLOSURE BOARD

First Floor South, Centennial Building

658 Cedar Street

St. Paul, MN 55155-1603

612/296-5148

## ABOUT ADVISORY OPINIONS

- The Campaign Finance & Public Disclosure 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 Minn. Stat. § 383B.055). Individuals or associations may ask for advisory opinions about these laws to guide their actions in compliance with Minn. Stat. Ch. 10A and Minn. Stats. §§ 383B.041 - 383B.058.
- Effective August 1, 1994:
  - A written advisory opinion issued by the Board is binding on the Board in any subsequent Board proceeding concerning the person making or covered by the request and is a defense in a judicial proceeding that involves the subject matter of the opinion and is brought against the person making or covered by the request unless:
    - ..the Board has amended or revoked the opinion before the initiating of the Board or judicial proceeding, has notified the person making or covered by the request of its action, and has allowed at least 30 days for the person to do anything that might be necessary to comply with the amended or revoked opinion;
    - ..the request has omitted or misstated material facts; or
    - ..the person making or covered by the request has not acted in good faith in reliance on the opinion.
- A request for an advisory opinion is nonpublic data and the advisory opinion to the requester is nonpublic data. The Board may publish an opinion that does not include the name of the requester or other identifying information unless the requester consents to the inclusion. The Board provides Consent for Release of Information forms to requesters. If the requester files a Consent form, the Board seeks public comment on the request before action is taken by the Board. Advisory opinion requests are discussed in meetings open to the public.

## ABOUT THE BOARD

### Mission Statement

- To promote public confidence in state government decision making through development and administration of disclosure, public financing, and enforcement programs which will ensure public access to information filed with the Board.

### 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 public officials, held any political party office other than precinct delegate, or been elected to public office for which party designation is required by statute in the three years preceding appointment to the Board;
- No more than three members of the Board shall support the same political party;
- No member of the Board may currently serve as a lobbyist.

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THIS ADVISORY OPINION IS PUBLIC DATA  
pursuant to Release of Information signed by requester

Issued: November 22, 1996

Issued to: Andrew H. Weinraub  
State & Federal Communications  
1755 Merriman Road, Suite 225  
Akron, Ohio 44313-5256

**RE: Application of lobbying statutes to internet worldwide web site advocating association's positions on legislative matters.**

**ADVISORY OPINION # 249**

**SUMMARY**

Creation of a worldwide web internet site on which an association publishes its positions on legislative matters does not require the registration of a lobbyist with the Ethical Practices Board.

**FACTS**

As the representative of a client interested in lobbying activities, you request an advisory opinion from the Ethical Practices Board based on the following facts:

1. Your client is an association which is considering establishing a worldwide web site on which it would include information advocating specific positions on matters before the legislature in Minnesota.
2. The site may also include material advocating positions with regard to legislation in other jurisdictions and more general information unrelated to specific legislation.
3. The site will not urge visitors to contact their legislators or other public officials with regard to issues presented, nor will it include names and addresses of such officials.
4. The association does not have estimates of the cost of establishing and operating this web site; however, it is expected that the portion of those costs allocable activities related to Minnesota will exceed \$250 per year.
5. Development and operation of the web site will be administered by paid staff of the association.
6. After the site is established, the association may provide information about the site and the address of the site to Minnesota legislators and other public officials. This information would not, in itself, include any material advocating a position on a matter before the legislature.

7. The association wants to know whether its proposed activities will require registration of a lobbyist with the Board and the subsequent reporting of lobbyist activities.

#### ISSUE

Does the creation of a worldwide web site which will advocate an association's positions on matters before the legislature require the registration of a lobbyist with the Ethical Practices Board?

#### OPINION

No, creation of the web site you describe will not require the designation and registration of a lobbyist on behalf of the association you represent.

Lobbyist registration and reporting is required when an individual, for compensation, spends more than 5 hours in a month or more than \$250 in a year attempting to influence legislative action by communicating with public officials or urging others to communicate with public officials. (Minn. Stat. § 10A.01, subd. 11. The statute provides other definitions of a lobbyist, but the foregoing statement is the only one applicable to the facts of this opinion.)

In issuing this opinion, the Board has considered whether the site, once created, constitutes "attempting to influence legislative . . . action by communicating or urging others to communicate with public . . . officials". Minn. Stat. § 10A.01, subd. 11.

Under the stated facts, the site will not urge others to communicate with public officials. The question, then, is whether the site itself constitutes communicating with public officials.

The Board concludes that maintaining the described site does not constitute "communicating . . . with public . . . officials" as that phrase is used in Minn. Stat. § 10A.01, subd. 11.

The fact that the association may inform public officials of the address of the site and about its contents is not sufficient to change the above characterization of the site.

THE FOLLOWING PUBLICATION DOES NOT IDENTIFY  
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA  
under Minn. Stat. § 10A.02, subd. 12(b) (1994 Minn. Laws, ch. 377, sec. 1)

Issued: October 25, 1996

**RE: Gift prohibition applied to legislative day activities**

**ADVISORY OPINION # 250**

**SUMMARY**

Provision of complimentary professional services to public officials at the request of a lobbyist principal is prohibited by Minn. Stat. § 10A.071.

**FACTS**

As the representative of a professional association, you request an advisory opinion from the Ethical Practices Board ("Board") based on the following facts:

1. The association is a lobbyist principal and you are one of the association's lobbyists.
2. The association is considering conducting a "Legislative Day" at the Capitol when the 1997 legislature is in session. The day would include meetings for association members, presentations and demonstrations to public officials and members of the public, and meetings between association members and their legislators.
3. As part of the legislative day, some of the association's members, who are not lobbyists themselves, may provide professional consultation services without charge to persons who are in the Capitol that day.
4. Currently these consultation services are not regularly available from association members or others in the profession. When they are available, the professionals are not generally reimbursed for providing these services.
5. Your association would like to see these consultation services become a part of the professional services recognized in the profession and to have those services compensated.

**ISSUE**

Is a gift to legislators or other officials of services in the form of professional consultation services in connection with a Legislative Day prohibited by Minn. Stat. § 10A.071?

## OPINION

Yes, the gift of free services to legislators or other officials is a prohibited gift under Minn. Stat. § 10A.071. Minn. Stat. § 10A.071 prohibits gifts to officials requested by lobbyist principals unless the gift falls within one of the specific exceptions to the statute.

The association, a lobbyist principal, is responsible for organization of the legislative day during which its members will provide the services under consideration. Thus, the gift of services is a gift requested by a lobbyist principal. Among the intended receivers of the gift are legislators and legislative staff members; two groups which are included in the definition of "officials" in Minn. Stat. § 10A.071.

The association believes that the services have value and that it would be appropriate for professionals providing these services to clients to be reimbursed for them.

A gift of the described services does not fall within the exception to the gift prohibition found at Minn. Stat. § 10A.071, subd. 3(a)(3) for services of insignificant monetary value. No other exception applies to the described gift.

THIS ADVISORY OPINION IS PUBLIC DATA  
pursuant to Release of Information signed by requester

Issued: November 14, 1996

Issued to: Ted Seifert  
People For Norman Volunteer Committee  
570 Frenn Avenue  
Red Wing, MN 55066

RE: Spending increase for candidate running for office for first time

ADVISORY OPINION # 251

SUMMARY

Candidate is entitled to 10% increase in spending limit even though candidate's previous principal campaign committee engaged in limited activity related to an office whose territory includes more than one-third of the population of the new office.

FACTS

As a representative of the People For Norman Volunteer Committee, the principal campaign committee for Senate candidate Merl Norman, you request an advisory opinion from the Ethical Practices Board based on the following facts:

1. Mr. Norman is a candidate for the state Senate in 1996.
2. The candidate previously had a principal campaign committee registered with the Ethical Practices Board when he was a candidate for the House of Representatives.
3. The previous committee (referred to herein as "the House committee") was registered on March 28, 1994. The House district for which the committee was registered includes more than one-third of the population of the Senate district for which Mr. Norman is now a candidate.
4. The House committee reported accepting 5 contributions totaling \$220 between April 8, 1994, and June 2, 1994 and making 3 campaign expenditures between March 17, 1994 and May, 1994, totaling \$220. The committee reported no other activity.
5. The House committee filed its annual report on January 5, 1995. On that report, the treasurer indicated that the committee had terminated, effective June 2, 1994.

ISSUE

Is the candidate entitled to a 10% increase in his campaign expenditure limit, as provided in Minn. Stat. § 10A.25, subd. 2(c), even though his House of Representatives committee engaged in the activities

described in the facts in a district which includes more than one-third of the population of the office now sought?

#### OPINION

Yes, the Candidate is entitled to the 10% spending limit increase provided in Minn. Stat. § 10A.25, subd. 2(c).

The spending increase is provided for candidates who are "running for that office for the first time" and who have not "run previously" for the for an office whose territory includes more than one-third of the population of the new office.

Mr. Norman is running for the office of Senator for the first time. The activities of the candidate's House of Representatives principal campaign committee, as described in the facts, were so limited as to not constitute a previous run for office as that concept is used in Minn. Stat. § 10A.25, subd. 2(c).

THE FOLLOWING PUBLICATION DOES NOT IDENTIFY  
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA  
under Minn. Stat. § 10A.02, subd. 12(b) (1994 Minn. Laws, ch. 377, sec. 1)

RE: Gift of a dinner to legislators

Issued: November 22, 1996

ADVISORY OPINION # 252

SUMMARY

Informal statements and conversation at tables prior to a dinner with legislators do not trigger an exception to the gift prohibition even if event programs and invitations indicate that participants are expected to engage in this interaction.

FACTS

As a registered lobbyist representing an association which is a lobbyist principal, you request an advisory opinion from the Ethical Practices Board ("Board") based on the following facts:

1. The association represents the professional individuals at facilities located at several locations throughout the state.
2. The association would like to sponsor and pay for a legislative dinner to be held in a downtown St. Paul hotel in January or February, 1997.
3. Several of the association's members from each of the facilities would attend the dinner. Legislators from the districts where the facilities are located would be invited as would some members of the legislative leadership.
4. The event would include the dinner, followed by a featured speaker. During a period of about 30 minutes prior to the dinner, attending legislators would be asked to speak to the association members at their tables about issues pending at the legislature which would be of interest to your members.
5. The invitations to the dinner and the program would indicate that attending legislators will be expected to speak to, and answer questions from, association members sitting at their tables.

ISSUE

Is the gift of a dinner permitted under an exception to the gift prohibition of Minn. Stat. § 10A.071 if attending legislators are asked to speak to other guests at their tables before dinner and to answer their questions?

OPINION

No, the gift you describe is a gift from a lobbyist principal to an official which does not fall within an exception provided in Minn. Stat. § 10A.071.

The statutory exception established in Minn. Stat. § 10A.071, subd. 3(a)(7), for “food or a beverage given at a . . . meal . . . by an organization before whom the recipient appears to make a speech or answer questions as part of a program” is not applicable under the facts you present. The statutory language implies that the individual recipient will make a presentation to the organization as a whole as a formal part of the program.

The guest legislators are not appearing before the organization, but are invited dinner guests. Informal conversation or remarks to others at the legislators’ tables before dinner, even if encouraged or expected, does not constitute an appearance before the organization to make a speech or answer questions.

It would be normal for guests at a legislative dinner to engage in discussions about legislative matters at their tables before the dinner begins. Formalizing this normal occurrence in writing on a program or invitation does not elevate it to the status of an appearance before the organization to make a speech or answer questions.

In your request, you suggest that previous advisory opinion #153, in which the Board reached a different conclusion, may be relevant. Advisory Opinion # 153 was based on facts different from those considered today and should not be read to suggest that informal discussion can serve as the basis for a Subdivision 3(a)(7), exception to the gift prohibition.

THE FOLLOWING PUBLICATION DOES NOT IDENTIFY  
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA  
under Minn. Stat. § 10A.02, subd. 12(b) (1994 Minn. Laws, ch. 377, sec. 1)

RE: **Noncampaign Disbursements**

Issued: November 22, 1996

**ADVISORY OPINION # 253**

**SUMMARY**

Principal campaign committee may use campaign funds to pay newly elected candidate's expenses directly related to serving in the new office even if those expenses are incurred before the candidate is sworn in. Such payments must be reported as noncampaign disbursements.

**FACTS**

As a non-incumbent elected to the state legislature in the last general election, you request an advisory opinion from the Ethical Practices Board based on the following facts:

1. You are a candidate with a principal campaign committee registered with the Ethical Practices Board. You won a seat in the legislature in the last election, but will not be sworn in to your new office until 1997.
2. It is necessary at this time for you to incur certain expenses directly related to serving in the office to which you were elected.
3. Your principal campaign committee has funds available which might be used for these expenses if such use is permitted under Minnesota Statutes, chapter 10A.

**ISSUE**

May a candidate's principal campaign committee use campaign funds for expenses of the candidate directly related to serving in office, but incurred before the candidate actually begins the term of service?

**OPINION**

Yes, your principal campaign committee may use campaign funds for your expenses directly related to serving in public office after you have won the general election.

Noncampaign disbursements include ". . . the candidate's expenses for serving in public office, other than for personal uses. . . ." (Minn. Stat. § 10A.01, subd. 10c(j)).

A winning candidate's expenses directly related to the office to which a candidate was elected are considered expenses for serving in the new office, even if those expenses are incurred before the candidate is actually sworn in. Such expenses are allowable as noncampaign disbursements under Minn. Stat. § 10A.01, subd. 10c(j) to the same extent, and with the same restrictions, that they would be allowed if the candidate had already begin the term of public service.



THE FOLLOWING PUBLICATION DOES NOT IDENTIFY  
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA  
under Minn. Stat. § 10A.02, subd. 12(b) (1994 Minn. Laws, ch. 377, sec. 1)

**RE: Activities related to student lobbying**

Issued: January 24, 1997

**ADVISORY OPINION # 254**

**SUMMARY**

A teacher in a public school who, as a part of an official school program, teaches students to lobby and performs services in support of the students' lobbying efforts does not become a lobbyist as a result of those activities.

**FACTS**

As an individual seeking the Ethical Practices Board's advice by which to guide your conduct, you request an advisory opinion based on the following facts:

1. You are a teacher in a Minnesota public school system.
2. The student government of the school system has decided to undertake a lobbying initiative in the 1997 legislature. A group of high school students has been selected for this initiative. The program will be a learning experience in which the participating students will learn how to lobby and will carry out lobbying activities in the legislature.
3. As the teacher assigned to provide guidance, instruction, and assistance to this student group, you will be involved in certain activities to facilitate and guide the students' lobbying activities.
4. Your activities may include:
  - a. helping the students locate legislation that may affect them;
  - b. helping the students analyze the legislation, decide which issues they want to become involved in, and determine what positions they want to take on those issues;
  - c. supporting the student efforts by tracking legislation in which they are interested;
  - d. helping students set up appointments with legislators;
  - e. helping transport students to and from meetings with legislators.
5. You will not be directly communicating with legislators to urge the students' positions; that activity will be accomplished by the students. You will not be urging others outside your student group to contact their legislators to urge the students' positions. As the teacher responsible for this program, you will urge the students in the group to be involved by contacting and meeting with legislators to lobby on the issues they have chosen.
6. The issues on which you will assist the students are not the issues of the school district which employs you. You do not perform services related to the district's lobbying activities.
7. You have no personal interest in the issues on which the students decide to lobby, except your interest as a teacher in the success of their learning experience.

## ISSUE

Do your activities as a teacher guiding and assisting students in their lobbying initiatives constitute lobbying so as to require your registration with the Ethical Practices Board as a lobbyist?

## OPINION

No, the activities you describe do not make you a lobbyist as defined in Minn. Stat. § 10A.01, subd. 11. Therefore, you are not required to register as a lobbyist with the Board.

You will not be communicating with legislators to urge them to take a particular position on the students' issues. You will not be urging others to communicate with legislators, other than in the context of the class for which you are responsible. In the class, neither you nor the school district dictate the issues for lobbying, nor the specific positions which will be taken on those issues.

A public school teacher who teaches students in a class how to lobby does not become a lobbyist by virtue of those teaching activities. This is true even when the teacher's activities include providing guidance and assistance to the students in selecting lobbying issues, identifying positions which might be taken, and in monitoring the results of the students' efforts.

THE FOLLOWING PUBLICATION DOES NOT IDENTIFY  
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA  
under Minn. Stat. § 10A.02, subd. 12(b) (1994 Minn. Laws, ch. 377, sec. 1)

**RE: Use of campaign funds for costs of serving in public office.**

Issued: January 24, 1997

**ADVISORY OPINION # 255**

**SUMMARY**

Costs of attending functions which directly relate to and assist a legislator in the performance of official duties may be paid with principal campaign committee funds and reported as noncampaign disbursements.

**FACTS**

As a state legislator with a principal campaign committee registered with the Ethical Practices Board, you request an advisory opinion based on the following facts:

1. In your capacity as a legislator, you receive a variety of invitations to various functions and dinners. You do not feel that you need to attend all of these events, but there are some which you feel are important for you to attend in your official capacity.
2. Attendance at some of these functions permits you to meet with constituents and/or to learn about constituent concerns.
3. Many functions are set up by associations for their members and these often include a meal, for which there may be a charge of \$25 or more.
4. Because these events are centered around the meal, you do not feel that it would be appropriate for you to attend the event free of charge and not eat.
5. As an example of the type of event you are describing, you cite a recent invitation you received to the Minnesota Chamber of Commerce's "Session Priorities" event. Chamber of Commerce members from your district will be attending the event and you feel that it is your responsibility to attend also.
6. You would not be attending these events except for the fact that you believe you need to do so in your capacity as a legislator.

**ISSUE**

Is a legislator's cost of attending the described functions in an official capacity a cost of serving in public office which may be paid with principal campaign committee funds?

## OPINION

Yes, the cost for a legislator to attend functions such as those described is a cost of serving in public office which may be paid for with principal campaign committee funds. These costs must be reported by the principal campaign committee as noncampaign disbursements.

Minn. Stat. § 10A.01, subd. 10c(j) provides that "payment by a principal campaign committee of the candidate's expenses for serving in public office, other than for personal uses" is a noncampaign disbursement.

The costs you describe are directly related to your service in public office. A primary reason you wish to incur these costs is to assist you in performing as a legislator. You would not incur these costs if you were not a legislator. Thus, the described costs are for expenses of serving in public office and are not for personal use within the meaning of the controlling statute.

THE FOLLOWING PUBLICATION DOES NOT IDENTIFY  
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA  
under Minn. Stat. § 10A.02, subd. 12(b) (1994 Minn. Laws, ch. 377, sec. 1)

**RE: Noncampaign Disbursement for replacement of stolen campaign signs**

Issued: January 24, 1997

**ADVISORY OPINION # 256**

**SUMMARY**

The cost of replacing campaign lawn signs which were stolen before they were ever used is a noncampaign disbursement to the extent that it does not exceed the cost of the stolen signs.

**FACTS**

As a candidate with a principal campaign committee registered with the Ethical Practices Board, you request an advisory opinion based on the following facts:

1. Your principal campaign committee purchased lawn signs for your campaign and reported the cost of the signs as a campaign expenditure.
2. The signs were stolen before they were ever used in the campaign.
3. Your committee had to purchase new signs to replace the stolen signs.

**ISSUE**

Is the cost of replacing campaign signs which were stolen before they could ever be used a noncampaign disbursement?

**OPINION**

Yes, the cost of replacing campaign signs which were stolen before they were used is a noncampaign disbursement to the extent that the cost does not exceed the cost of the original signs. Any cost for replacement signs which exceeds the cost of the original signs is a campaign expenditure.

In reaching this conclusion, the Board relies on the facts that (1) the original signs had never been used; that is, the committee never obtained any campaign benefit from them and (2) the inability to use the original signs was caused by external events not within the control of the committee.



THIS ADVISORY OPINION IS PUBLIC DATA  
pursuant to consent for release of information signed by the requester

Issued to: Greta Hesse Gauthier  
Director  
Minnesota Environmental Trust Fund Coalition  
P. O. Box 127  
Shafer, MN 55074

Issued: January 24, 1997

**RE: Contributions from unregistered associations to ballot committee**

**ADVISORY OPINION # 257**

**SUMMARY**

A corporation may make a contribution directly to a ballot question committee; an unregistered association other than a corporation must either register a political fund with the Board or provide a disclosure statement in lieu of registration in order to make the contribution. A lobbyist's activities in promoting the issues of the association the lobbyist is registered for and represents does not constitute a donation in kind to a political committee merely because the committee and the association support the same issues or because the association was involved in establishing the political committee.

**FACTS**

As the representative of The Minnesota Environmental Trust Fund Coalition, a political committee registered with the Ethical Practices Board, (hereinafter referred to as "the Committee") you request an advisory opinion based on the following facts:

1. The Committee was established by a coalition of individuals and associations for the sole purpose of promoting a ballot question. It will not attempt to influence the nomination or election of any candidate.
2. The Committee wants to solicit and accept contributions from associations, including corporations, not registered with the Board.
3. Some members of the coalition which established the Committee are also lobbyist principals with legislative agendas of their own. In some cases, these individual coalition members may lobby for the ballot question as a part of their own agendas.
4. When coalition members use their own lobbyists to promote the ballot question, they will be doing so on their own behalf; not on behalf of the Committee. In these cases the lobbyists will register and report to the Board based on the coalition member they represent.
5. The Committee wants comply with all of the provisions of Minnesota Statutes, chapter 10A, when it accepts contributions or engages in its other activities.

## ISSUE ONE

What requirements must be met under Minnesota Statutes, chapter 10A, for a corporation to make, and for the Committee to accept, a contribution of more than \$100?

## OPINION

Minnesota Statutes, chapter 10A, imposes no requirements on a corporation making a contribution to the Committee. The Committee is required to keep records and report the contribution in the same way it records and reports all other contributions received.

The Committee was established and registered as a "political committee", which is "any association . . . whose major purpose is to influence the nomination or election of a candidate or promote or defeat a ballot question". Minn. Stat. § 10A.01, subd. 15. The Committee, which will not seek to influence the nomination or election of any candidate, is commonly referred to as a "ballot question committee".

Chapter 10A also recognizes "unregistered associations", which are groups or entities which are not political committees or political funds registered with the Board. Corporations are a particular type of unregistered association.

Generally, the treasurer of a political committee may not accept a contribution of more than \$100 from an unregistered association without receiving a prescribed additional disclosure statement at the same time. Minn. Stat. § 10A.22, subd. 7.

Donors are also restricted by a provision that no association other than a political committee may make contributions of more than \$100 in any one year unless the transfer is made from a political fund registered with the Board. Minn. Stat. § 10A.12, subd. 1.

While corporations may not make contributions to influence the nomination or election of candidates, Minn. Stat., Chapter 211B includes specific provisions related to corporate contributions to promote or defeat ballot questions. The Chapter 10A requirements for corporate contributions to ballot question committees must be determined in the context of the relevant Chapter 10A provisions, but also in the context of the statute granting corporations the right to participate in ballot question activities. Minn. Stat. § 211B.15, subd. 4, provides that:

"A corporation may make contributions or expenditures to promote or defeat a ballot question, to qualify a question for placement on the ballot unless otherwise prohibited by law, or to express its views on issues of public concern. A corporation may not make a contribution to a candidate for nomination, election, or appointment to a political office or to a committee organized wholly or partly to promote or defeat a candidate."

While Chapter 211B is not within the jurisdiction of the Board to interpret, we must acknowledge its provisions when they bear on the interpretation of Chapter 10A, for which we are responsible.

We believe that the specific grant of authority to make contributions to promote or defeat ballot questions provided in Chapter 211B is irreconcilable with, and therefore supersedes, the Chapter 10A restrictions otherwise imposed on contributions from unregistered associations. Thus, a corporation may make a contribution directly to a ballot question committee free of any restriction found in Chapter 10A.

The Board first adopted this position in 1980 when it issued advisory opinion #73. In that opinion, the Board said:

"A corporation may spend money to promote or defeat ballot questions either by registering its own political fund or by contributing to an already registered political fund . . .".

The Board sees no reason to deviate from its prior opinion. While opinion #73 dealt with contributions from a corporation to a political fund, we see no basis for a different rule relating to contributions to a political committee, as is the case considered in this opinion.

The Board notes, as did the Board in 1980, that the receiving committee will report the contribution and all expenditures resulting from it. We also note that the committee under consideration in this opinion will limit its activities to the ballot question. This restriction eliminates the possibility of a violation of the §211B.15 prohibition on corporate contributions to mixed purpose committees.

## ISSUE TWO

What are the Minnesota Statutes, chapter 10A, requirements for an unregistered association other than a corporation to make a contribution of more than \$100 to the Committee?

## OPINION

An unregistered association, other than a corporation, which wishes to make a contribution of more than \$100 to a ballot question committee must either (1) register a political fund with the Board and make the contribution through the political fund or (2) provide a disclosure statement with the contribution pursuant to Minn. Stat. § 10A.22, subd. 7, and the requirements set forth under Issue Three of this opinion. Whether both options are available to a particular association depends on the sources of funds from which the association intends to make the contribution.

Only corporations benefit from the specific Chapter 211B authorization of ballot question contributions. Therefore, we must independently examine the requirements of Chapter 10A as they relate to non-corporate unregistered associations.

We first consider the unregistered association which intends to make contributions from membership fees or dues. Such an association may register a political fund of its own, directly transfer membership fees or dues to its fund under Minn. Stat. § 10A.12, subd. 5, and then make contributions from the fund. By registering a political fund, the association removes its political activities from those of an unregistered association and must comply with the requirements imposed on all political funds. This option is only available for the transfer of membership fees and dues, and only for the transfer of those moneys to the association's own political fund.

An unregistered association may also make a contribution to the Committee if it meets the disclosure statement requirements of Minn. Stat. § 10A.22, subd. 7. This is the only option available for an unregistered association which intends to make contributions from association receipts from other than membership fees or dues. This option is also available to associations that wish to make contributions from membership fees or dues without registering a political fund. Minn. Stat. § 10A.22, subd. 7.

To comply with the §10A.22 disclosure statement requirement, a statement meeting the requirements described in Issue Three of this opinion must be provided by the contributing association at the time the contribution is made. The receiving committee is required to file copies of each disclosure statement with its Report of Receipts and Expenditures for the period during which the contribution was received.

We finally note that any association which accepts contributions of more than \$100 to promote or defeat a ballot question must register as a political committee or must register a political fund as a result of accepting the contributions. See Minn. Stat. § 10A.01, subds. 15 and 16, and § 10A.14. For that reason, any contribution of more than \$100 to your committee from an association specifically raising money for the ballot question must come from a registered political committee or political fund.

### ISSUE THREE

What must be disclosed in a statement given with a contribution by an unregistered association under Minn. Stat. § 10A.22, subd. 7, and what time period must the disclosure statement cover?

### OPINION

Minn. Stat. § 10A.22, subd. 7, requires a statement which meets the disclosure and reporting period requirements of Minn. Stat. § 10A.20. The statement must be certified as true and correct by an officer of the contributing association and must cover the period from 30 days preceding the contribution, or from the beginning of the reporting period during which the contribution is made, whichever is longer.

We have previously noted in this opinion that if an association raises more than \$100 to influence the nomination or election of a candidate as defined in Minnesota Statutes, chapter 10A, or to promote or defeat a Minnesota ballot question, it is subject to independent requirements that it register with the Board. Thus the procedure described in Minn. Stat. § 10A.22, subd. 7, and in this opinion, is not available to such an association.

For those associations whose major purpose is to influence nominations or elections at the local level, in other states, or at the federal level, all of the information specified in Minn. Stat. § 10A.20 must be provided on the disclosure statement. Examples of associations included in this group are political action committees or campaign committees involved in local, non-Minnesota, or federal elections. These associations may meet the disclosure requirement by completing the form which the Board provides to its registered political committees.

For unregistered associations for which political activity is not a major purpose, the disclosure requirements of Minn. Stat. § 10A.20 are not as readily applied. These associations consist primarily of unincorporated businesses which want to make limited contributions under Minn. Stat. § 10A.22, subd. 7 from their regular operating income.

The Board does not believe that the disclosure requirements applicable to this limited group of associations should be so burdensome that they become a virtual prohibition on the contributions permitted under Minn. Stat. § 10A.22, subd. 7. The Board will require all disclosure which will help inform the public about the campaign finance aspects of the contribution, but not that which is irrelevant to campaign finance and delves into the private transactions of the association.

Therefore, we set forth below the requirements for a disclosure statement to be provided by an unregistered association which does not have as a major purpose influencing political nominations or elections or promoting or defeating ballot questions and which is making its contribution solely from income derived in the ordinary course of its business. These requirements are not applicable to associations outside of this limited scope.

For such unregistered associations, the Minn. Stat. § 10A.22, subd. 7, statement must include:

1. The complete legal name of the contributing association and its full business address;
2. The name and address of the individual who authorized the contribution;
3. The name and address of each political committee or political fund to which a contribution has been made within the year, together with the amount and date of each transfer;
4. The sum of all such transfers made during the year through the date of the statement;
5. The name and address of the individual who certifies the statement to be true and correct.

#### ISSUE FOUR

Is there any difference in the requirements if the unregistered association makes its contribution by means of a donation in kind?

#### OPINION

No, the requirements stated above apply to all contributions including donations in kind.

#### ISSUE FIVE

Is there a limit to the number of times an unregistered association may make a contribution to a single committee using the Minn. Stat. § 10A.22, subd. 7, disclosure statement procedure?

#### OPINION

No. While the disclosure statement procedure limits contributions to three separate political committees or political funds during a year, it does not limit the number of contributions to each of those three entities. A new disclosure statement must be provided with each separate contribution made.

#### ISSUE SIX

May a political subdivision, including a local unit of government, make a contribution to the Committee, and may the Committee accept that contribution?

## OPINION

Minnesota Statutes, chapter 10A, does not prohibit contributions by political subdivisions to political committees registered with the Board. However, the Board is not able to advise you or a political subdivision with regard to the many other statutes, charters, or regulations which may limit the political subdivision's activities. A political subdivision intending to make a contribution to the Committee is advised to consult with its own legal advisors.

If a political subdivision determines that it may make a contribution to the Committee, it must provide the same statement with the contribution that an unregistered association would be required to provide.

## ISSUE SEVEN

If a member of the coalition which formed the Committee makes the Committee's ballot question one of its own priorities and has its own paid lobbyist undertake lobbying activities in support of the question, would those activities constitute a donation in kind to the Committee.

## OPINION

No. Any entity may make any issue one of its lobbying priorities and lobby on behalf of that issue. As long as the lobbyist is registered on behalf of the entity and represents that entity rather than the Committee, the lobbying efforts do not constitute a donation in kind to the Committee.

THIS ADVISORY OPINION IS PUBLIC DATA  
pursuant to a consent for release of information signed by the requester

Issued to: Peter J. Orput  
14900 61st St. North  
P. O. Box 6  
Stillwater, MN 55082

Issued: February 28, 1997

RE: Gift exception for members of a group

### ADVISORY OPINION # 258

#### SUMMARY

The gift prohibition of Minn. Stat. § 10A.071 does not apply to gifts given to members of an association if the gifts are given because of membership in the association; the same gift is given to each member; and a majority of the members are not officials as defined in the statute.

#### FACTS

As the representative of the Minnesota Chiefs of Police Association, you request an advisory opinion from the Ethical Practices Board based on the following facts:

1. The Minnesota Chiefs of Police Association ("the Association") is a membership organization which is not a lobbyist principal as defined in Minnesota Statutes.
2. The Association's members are police and security professionals.
3. In order to become a member of the association, an individual must apply for membership, meet the membership criteria, and pay the required membership fees. Only chiefs of police in Minnesota may be full members with the right to vote. Other individuals in the police or security profession may be eligible to become associate members.
4. Some of the Association's members are police chiefs in "metropolitan governmental units" as defined in Minn. Stat. § 10A.01, subd. 26. These members are likely to be "local officials" of those metropolitan governmental units, as that term is defined in Minn. Stat. § 10A.01, subd. 25.
5. A majority of the members of the Association are not local officials in metropolitan governmental units.
6. The Association holds an annual meeting for its members at which it conducts business and provides a meal with entertainment. At the meeting, the Association would also like to provide a souvenir memento to each member.
7. If any memento is provided, the same item would be given to each member.

8. The Association would like to solicit financial support for the entertainment and mementos from other associations, some of which may be lobbyist principals as defined in Minn. Stat. § 10A.01, subd. 28.

#### ISSUE ONE

Are entertainment and mementos purchased by the Minnesota Chiefs of Police Association with a contribution from a lobbyist principal prohibited by Minn. Stat. § 10A.071 when they are provided to Association members who are local officials of metropolitan governmental units?

#### OPINION

No. The described gifts fall within an exception to the general prohibitions of Minn. Stat. § 10A.071.

Minn. Stat. § 10A.071, subd. 3(b), states:

“The provisions in this section [§ 10A.071] do not apply if the gift is given:

(1) because of the recipient's membership in a group, a majority of whose members are not officials, and an equivalent gift is given to the other members of the group”

We find that the described gifts meet the criteria for an exemption under this subdivision. Thus, the provisions of Minn. Stat. § 10A.071 which prohibit certain gifts are not applicable.

#### ISSUE TWO

Are the described gifts prohibited by Minn. Stat. § 471.895?

#### OPINION

Minn. Stat. § 471.895 is not within the Board's jurisdiction.

The requester is cautioned that Minn. Stat. § 471.895 is applicable to a group of officials which is different from that regulated by Chapter 10A. Minn. Stat. § 471.895 also covers a different scope of regulated givers. For these reasons, this advisory opinion, based solely on Chapter 10A, should not be considered applicable to the same questions under Minn. Stat. § 471.895.

THE FOLLOWING PUBLICATION DOES NOT IDENTIFY  
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA  
under Minn. Stat. § 10A.02, subd. 12(b) (1994 Minn. Laws, ch. 377, sec. 1)

RE: Gift of a dinner to legislators

Issued: March 6, 1997

ADVISORY OPINION # 259

SUMMARY

Informal discussion, including questions and answers at a dinner, does not meet the requirements to except the dinner from the gift prohibition, even if invitations indicate that participants are expected to engage in this interaction.

FACTS

As a legislator, and thus an official as defined in Minn. Stat. § 10A.071, you request an advisory opinion from the Ethical Practices Board ("Board") based on the following facts:

1. The Minnesota Beer Wholesalers Association, a lobbyist principal, intends to sponsor and pay for a dinner to which certain legislators and their staff members, also public officials under Minn. Stat. § 10A.071, will be invited.
2. The event is being held as a way for the Association's members to stay in touch with these legislators.
3. The event is to include informal discussion concerning legislation that might affect Association members. At some point during the event, a microphone will be brought around and each attending official will be expected to give some brief biographical information and make comments about legislative matters related to the Association's interests. At that time Association members may ask questions of the official. The program for the evening will also consist of an open dialog between the attending officials and the Association members.
4. The invitations to the dinner will indicate the intended expectations about the invitee's participation, as described above.

ISSUE

Is the gift of a dinner permitted under an exception to the gift prohibition of Minn. Stat. § 10A.071 if attending officials participate in a program consisting of an informal, open dialog, which includes questions and answers?

## OPINION

No, the gift you describe is a gift from a lobbyist principal to an official which does not fall within an exception provided in Minn. Stat. § 10A.071.

The statutory exception established in Minn. Stat. § 10A.071, subd. 3(a)(7), for “food or a beverage given at a . . . meal . . . by an organization before whom the recipient appears to make a speech or answer questions as part of a program” is not applicable under the facts you present. The statutory language implies that the individual recipient will make a presentation to the organization as a whole as a formal part of the program.

The guest officials are not appearing before the organization to make a speech or answer questions, but are invited dinner guests. Informal, open dialog, even if it includes questions and answers, does not constitute an appearance before the organization to make a speech or answer questions as a part of a program.

The exception provided in Minn. Stat. § 10A.01, subd 3(a)(7), is applicable only to an official who is specifically asked “to make a speech or answer questions as part of a program”. The official asked to make the speech or appear to answer questions must formally accept the request and accept the obligation to be a part of the program.

An blanket invitation to a dinner, extended to a group of officials, is not sufficient to bring the event within the exception even if it indicates that those officials who accept, and then ultimately attend, are expected to make brief remarks or possibly answer questions.

THIS ADVISORY OPINION IS PUBLIC DATA  
pursuant to a consent for release of information signed by the requester

Issued to: The Honorable Sandy Pappas  
State Senator, District 65  
182 Prospect Boulevard  
St. Paul, MN 55107

Issued: February 28, 1997

**RE: Fundraising for local office campaign by Chapter 10A candidate**

**ADVISORY OPINION # 260**

**SUMMARY**

Minn. Stat. § 10A.065, which prohibits certain fundraising by candidates during the legislative session is not applicable to fundraising for a local campaign. Minn. Stat. § 10A.071, which prohibits gifts from lobbyists to officials is not applicable to a contribution by a lobbyist to an official's campaign for local office.

**FACTS**

As a legislator, you ask the Ethical Practices Board (Board) for an advisory opinion based on the following facts:

**FACTS**

1. You are a "candidate" under Minnesota Statutes, Chapter 10A and have also decided to run for a local elected office. You have established a separate campaign organization for that office.
2. Your local campaign organization wants to accept contributions from lobbyists.
3. Since you are a candidate under Chapter 10A, you want to know whether certain Chapter 10A restrictions affect your right to raise money for your local campaign.

## ISSUE ONE

Does the Minn. Stat. § 10A.065 prohibition on certain fundraising during the legislative session apply to a candidate with respect to solicitation or acceptance of money or benefits to support the candidate's local office campaign?

## OPINION

Minn. Stat. § 10A.065 does not apply to the solicitation or acceptance of money or benefits for a local office campaign.

Minn. Stat. § 10A.065 restricts solicitation or acceptance of certain "contribution[s]" during the legislative session. A "contribution" is a transfer of money or benefits to a principal campaign committee, political committee, or political fund for the purpose of influencing the nomination or election of a candidate for legislative, constitutional, or judicial office. Minn. Stat. § 10A.01, subs. 5, 7, 7a, and 7b.

A transfer to a local campaign is not a transfer to a principal campaign committee, political committee, or political fund, and is not for the purpose of influencing the nomination or election of a legislative, constitutional, or judicial candidate. Therefore it is not a "contribution" under Chapter 10A and is not restricted by Minn. Stat. § 10A.065.

A different conclusion was reached regarding this issue in Advisory Opinion #130. The result reached here is the correct interpretation of the statute.

## ISSUE TWO

Is a transfer of money or benefits from, or at the request of, a lobbyist or a lobbyist principal to an official's campaign for local office a prohibited gift under Minn. Stat. § 10A.071?

## OPINION

A transfer of money or benefits to a local campaign is not a gift within the meaning of Minn. Stat. § 10A.071 and therefore is not subject to the gift prohibition.

Money or benefits transferred to a local campaign may be used only for the limited purposes specified in Minnesota Statutes, Chapter 211B, which governs use of campaign contributions. While the Board does not interpret Chapter 211B, we do recognize that it limits the use of campaign assets to campaign purposes. On that basis, we conclude that a transfer to a local campaign is not a gift, within the meaning of Minn. Stat. § 10A.071, to the official conducting the campaign.

THE FOLLOWING PUBLICATION DOES NOT IDENTIFY  
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA  
under Minn. Stat. § 10A.02, subd. 12(b) (1994 Minn. Laws, ch. 377, sec. 1)

Issued: March 21, 1997

**RE: Candidate involvement in other political committee; use of principal campaign committee funds to promote a constitutional amendment.**

**ADVISORY OPINION # 261**

**SUMMARY**

A candidate may not form, or exert direct or indirect control over, a political committee separate from the candidate's principal campaign committee. A candidate's use of principal campaign committee funds to promote a constitutional amendment must be reported as campaign expenditures.

**FACTS**

As a legislator, you ask the Ethical Practices Board (Board) for an advisory opinion based on the following facts:

1. You have a principal campaign committee registered with the Board for your legislative office and thus are a candidate as defined in Minn. Stat. § 10A.01, subd. 5.
2. You are interested in promoting a constitutional amendment both during the legislative process of qualifying the matter for placement on the general election ballot and once it is on the ballot. You expect to be a sponsor of the legislation that would place the amendment on the general election ballot.
3. You are considering the formation of a separate political committee for the purpose of carrying out activities related to the constitutional amendment.
4. You are also considering use of your own principal campaign committee funds, if permitted by statute, for activities related to promotion of the amendment.

**ISSUE ONE**

What role may a candidate play in the formation and operation of a political committee established to promote a constitutional amendment?

**OPINION**

A candidate's participation in the formation or operation of a political committee other than the candidate's own principal campaign committee or a party unit is generally prohibited by Minn. Stat. § 10A.19, subd. 1, if that committee would operate under the direct or indirect control of the candidate.

While you might serve in some advisory capacity to a committee established and controlled by others, there is inherent potential for indirect control in every such situation, which control is prohibited by Minn. Stat. § 10A.19, subd. 1.

In order to render an opinion more specific than we state above, we would need to review the specific facts related to each proposed involvement of a candidate in another political committee. We state generally, however, that because the statutory prohibitions are written in broad terms, we believe that they must also be interpreted broadly.

## ISSUE TWO

To what extent may a candidate use principal campaign committee funds for activities related to promotion of a constitutional amendment?

## OPINION

Principal campaign committees may use their funds to make campaign expenditures.

A campaign expenditure is an expenditure for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or defeating a ballot question. Minn. Stat. § 10A.01, subd. 10. Promoting a ballot question includes activities related to qualifying the question for placement on the ballot. Minn. Stat. § 10A.01, subd. 23.

Campaign expenditures must be reported as such on the periodic Reports of Receipts and Expenditures filed by the committee and count toward the candidate's campaign spending limit.

**ADVISORY OPINION REQUEST #262**

**This advisory opinion request was withdrawn by the requester prior to the Board's issuance of an opinion.**

The request is nonpublic data under Minn. Stat. § 10A.02, subd. 12(b)



THE FOLLOWING PUBLICATION DOES NOT IDENTIFY  
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA  
under Minn. Stat. § 10A.02, subd. 12(b) (1994 Minn. Laws, ch. 377, sec. 1)

Issued: March 21, 1997

**RE: Use of funds by legislative caucus committee**

**ADVISORY OPINION # 263**

**SUMMARY**

A caucus committee expenditure for mailings, advertising, or similar costs to promote the party's legislative agenda, if generally permitted by statute, may be an approved expenditure on behalf of a candidate, a general committee disbursement, or an independent expenditure. Classification of the cost depends on the specific content and timing of the promotional piece and on the party's candidates' participation, if any, in approving the expenditure.

**FACTS**

As the representative of a political party unit, you ask the Ethical Practices Board (Board) for an advisory opinion based on the following facts:

1. The party unit you represent is a party organization in one of the houses of the legislature (a caucus). This party unit has established a political committee (the Caucus Committee) registered with the Board.
2. The Caucus Committee wants to make expenditures for various types of mailings and advertising in some legislative districts of the state to promote the party's legislative agenda.
3. In some of the districts candidates associated with the Caucus Committee's party have principal campaign committees for legislative offices registered with the Board.
4. In some of the districts the incumbent legislator is a member of a party other than the Caucus Committee's party.
5. The next general election in which any legislative offices will be elected will occur in 1998. Candidates will not be able to file for those offices until 1998, so it is not possible to be certain at this time whose names will appear on either the primary or general election ballots.
6. You request the Board's direction with respect to whether the possible expenditures described above are to be allocated to individual candidates.

**ISSUE ONE**

May contributions received by a Caucus Committee be used to promote the committee's legislative agenda?

## OPINION

While you did not specifically ask for the Board's opinion on this preliminary issue, we state it in order to make it clear that in responding to the questions you do specifically ask, we are not determining whether the use of political committee funds for the purposes you contemplate is authorized by statute.

Use of political committee funds is governed primarily by Minnesota Statutes, chapter 211B, the Fair Campaign Practices Act, which is not under the Board's jurisdiction. To determine whether the proposed use is permitted under chapter 211B, you will need to consult your own legal advisors.

**For the purposes of discussing the specific issues you raise, we assume that you have independently determined that Caucus Committee funds may be used to promote your party's legislative agenda and that your only request to the Board is for direction on how you should report such an expenditure and whether it would constitute a contribution to any candidate affiliated with your political party.**

## ISSUE TWO

Assuming that it is generally permitted by statute, is an expenditure by a Caucus Committee promoting the party's legislative agenda generally, without identifying any particular candidate, allocable to any of the party's candidates as a donation in kind?

## OPINION

No. An expenditure by a party unit committee which is limited to promoting the party's legislative agenda without identifying or referring to any candidate specifically is an expenditure on behalf of the political party unit itself and is not allocable to any candidate.

Such an expenditure must be reported on the committee's Report of Receipts and Expenditures under the "Other Disbursements" category.

## ISSUE THREE

How is the expenditure categorized for reporting and allocation to candidates as a contribution if the name of the current incumbent legislator in the district, who is a member of another party, is specifically mentioned?

## OPINION

If the name of an opposing candidate is specifically mentioned, the expenditure may be a committee disbursement not allocable to any candidate; it may be an approved expenditure which is a contribution to the approving candidates; or it may be an independent expenditure.

In general, an expenditure promoting a party's legislative agenda and specifically naming an opposing party's incumbent legislator, is assumed to be made for the purpose of influencing the nomination or election of the party's own candidates in the district for the same office (or future candidates if none are currently registered). Minn. Stat. § 10A.01, subd. 10. Determination of how such an expenditure is classified for reporting and contribution allocation purposes is governed by the criteria discussed below.

### **Approved expenditure allocable to candidates**

If an expenditure as described above is made with the authorization, with the expressed or implied consent, or in cooperation or in concert with, or at the request or suggestion of a candidate of your party in that district, or of the candidate's principal campaign committee, or agent, then the expenditure is generally an approved expenditure which is a contribution to that candidate. Minn. Stat. § 10A.01, subd. 10a.

When a candidate of the party will appear on the primary or general election ballot for the subject office in the district at the time the subject communication takes place, there is a conclusive presumption that the candidate has approved of the expenditure. In such a case, the expenditure is allocated to the candidate without the need for a specific manifestation of the candidate's approval. You should note, however, that making an expenditure on behalf of a candidate without first obtaining written approval is a violation of Minn. Stat. § 10A.17, subd. 2.

If more than one of the party's candidates for the same office and district approve the expenditure, then it is to be allocated between them as a campaign contribution.

### **Independent Expenditure**

An expenditure as described above is an independent expenditure, not allocable to any candidate, if all three of the following criteria are met:

1. the expenditure expressly advocates the election or defeat of a clearly identified candidate in the district;
2. the expenditure is made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of any candidate, or any candidate's principal committee or agent;
3. the political party of the party unit making the expenditure does not have a candidate on the ballot for that office in the district at the time the communication paid for with the independent expenditure takes place;

Minn. Stat. § 10A.01, subd. 10b.

Communications which are the result of independent expenditures must include the disclaimer required by Minn. Stat. § 10A.17, subd. 4.

Independent expenditures are reported in the independent expenditure category on the committee's Report of Receipts and Expenditures. The report must also include the affidavit related to independent expenditures required under Minn. Stat. § 10A.20, subd. 6a.

### **Committee disbursement**

An expenditure as described above which meets the requirements for an independent expenditure, except for the fact that it does not expressly advocate the defeat of the named opposing candidate, is a general disbursement of the committee. Such an expenditure is not allocable to any candidate as a contribution and must be reported under the "other disbursements" category on the committee's Report of Receipts and Expenditures.



THE FOLLOWING PUBLICATION DOES NOT IDENTIFY  
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA  
under Minn. Stat. § 10A.02, subd. 12(b)

Issued: April 25, 1997

RE: Potential conflict of interest for legislator

### ADVISORY OPINION # 264

#### SUMMARY

A legislator's vote which does not affect the legislator's financial interests, or those of an associated business of the legislator, does not create a potential conflict of interest under Minn. Stat. § 10A.07.

#### FACTS

As a legislator, and therefore a public official as defined in Minnesota Statutes, chapter 10A, you ask the Ethical Practices Board for an advisory opinion based on the following facts:

1. In addition to being a legislator, you are an employee of a Minnesota city.
2. One of your responsibilities as a city employee is to serve as the executive director of an independent non-profit corporation engaged in youth programs. You are not paid separately by the non-profit for your work on its behalf.
3. The non-profit corporation is governed by a board of directors which includes high ranking executives of certain Minnesota businesses. Two of these executives are directly responsible for fundraising for the non-profit corporation. In addition, the businesses which employ these executives provide benefits to the non-profit corporation and directly sponsor some of its activities.
4. As executive director of the non-profit corporation, you work closely with these supporting businesses and their representatives. You do not receive compensation from, nor do you own securities in, these businesses.
5. As a legislator, you may be called upon to vote on measures which would directly affect the financial interests of these supporting businesses.

#### ISSUE

Does a potential conflict of interest arise under Minn. Stat. § 10A.07 for a public official who is the executive director of a nonprofit corporation (although paid by another entity for these services) and who is called upon to vote on a matter which will affect the financial interests of a business which supports the non-profit corporation?

## OPINION

No. The non-profit corporation is not an associated business of the official, because it is not a source of compensation for the official, nor does the official own securities in it. Minn. Stat. § 10A.01, subd. 4. For the same reasons, the businesses providing support to the non-profit corporation are not associated businesses of the official.

A potential conflict of interest arises under Minn. Stat. § 10A.07 only when a public official's vote would affect the financial interests of the official or those of an associated business.

This opinion is limited to interpretation of the conflict of interest provisions of Minn. Stat. § 10A.07. Your request indicates that you have general concerns about how your vote in the described matter may be construed by others. That issue is not within the scope of Minnesota Statutes Chapter 10A and the Board expresses no opinion on it.

THE FOLLOWING PUBLICATION DOES NOT IDENTIFY  
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA  
under Minn. Stat. § 10A.02, subd. 12(b)

Issued: April 25, 1997

**RE: Use of funds by political party unit committee**

**ADVISORY OPINION # 265**

**SUMMARY**

A political party unit expenditure for mailings, advertising, or similar communications, naming a candidate of the opposing party, may be reported as an approved expenditure on behalf of a candidate, a general committee disbursement, or an independent expenditure. Classification of the expenditure depends on the specific content and timing of the communications and on the party's candidates' participation, if any, in approving the expenditure.

**FACTS**

As the representative of a political party unit, you ask the Ethical Practices Board (Board) for an advisory opinion based on the following facts:

1. The party unit wants to make expenditures for various types of communications in some legislative districts of the state. In each district, the communications will name the current incumbent legislator, who is a member of an opposing party. The communications may or may not expressly urge the defeat of the incumbent.
2. You request the Board's direction with respect to allocation and reporting of the possible expenditures described in a number of situations.
3. You present seven scenarios which might occur prior to a candidate's filing for office. These scenarios range from a situation where the party has no announced candidate and no candidate registered with the Board for the office to a situation where the party's candidate has announced, has registered with the Board, has party convention endorsement, and has no primary election opponent.
4. The scenarios you present include combinations of the factors of candidacy announcement, registration with the Board, party convention endorsement, and opposition within the party.
5. In each case, it is stipulated that the candidate(s), if any, of the party making the expenditure have not filed for office.

**ISSUE**

In each of the situations described in the facts, is the expenditure allocated as a contribution to any candidate of the party making the expenditure? How is each expenditure classified by the party unit for reporting purposes?

## OPINION

This opinion addresses only the reporting of the described expenditures. We assume that you have independently determined that party unit committee funds may be used in the ways you contemplate. For further discussion relating to general use of political committee funds, you are referred to Issue One of Advisory Opinion #263, which is included in the citations at the end of this opinion.

### Allocation and Classification of Expenditure

Factors such as public or media announcement of a candidate's intention to seek the office, registration of a principal campaign committee with the Board, party endorsement, or the presence of other candidates of the same party, are not relevant to determination of whether an expenditure is a contribution to a candidate of the party.

Allocation of the expenditures you describe, and classification of the expenditures for reporting purposes, are governed by the following principles:

1. If an expenditure is made with the authorization, with the expressed or implied consent, or in cooperation or in concert with, or at the request or suggestion of a candidate of your party in that district, or of the candidate's principal campaign committee, or agent, then the expenditure is an approved expenditure which is a contribution to that candidate. Minn. Stat. § 10A.01, subd. 10a.
2. If the expenditure is not attributable to a candidate under part 1 above, and if the communication does not expressly advocate the defeat of a candidate of an opposing party, it is reported with the other disbursements of the party unit.
3. If the expenditure is not attributable to a candidate under part 1 above, and if the communication expressly advocates the defeat of a candidate of an opposing party, it is reported as an independent expenditure. Minn. Stat. § 10A.01, subd. 10b.

### Reporting requirements

Reports of expenditures made in opposition to a candidate must include certain information regardless of whether the expenditure reported as an independent expenditure or a general disbursement of the committee. Such expenditures which, in aggregate, are more than \$100 in a calendar year to a vendor must include:

1. the name and complete mailing address, including zip code, of the vendor;
2. the dates and amounts of each expenditure;
3. the purpose of the expenditure; that is, what was purchased;
4. the name, address, and office sought, of each candidate opposed by the expenditure;
5. a statement that the expenditure was in opposition to the candidate listed.

An report which discloses independent expenditures must also include the affidavit regarding independent expenditures required by Minn. Stat. § 10A.20, subd. 6a, cited below.

THE FOLLOWING PUBLICATION DOES NOT IDENTIFY  
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA  
under Minn. Stat. § 10A.02, subd. 12(b)

Issued: April 25, 1997

**RE: Use of principal campaign committee funds for computer training**

**ADVISORY OPINION # 266**

**SUMMARY**

Costs of computer training which is needed to enable a legislator to use a state-provided personal computer may be paid with principal campaign committee funds and reported as a noncampaign disbursement.

**FACTS**

As a member of the legislature, you ask the Ethical Practices Board for an advisory opinion based on the following facts:

1. In December, 1996, the legislative body in which you serve provided its members with laptop personal computers to use in their daily legislative tasks.
2. You had no previous knowledge of computers or how to use them. The House provided four hours of computer training, but this was inadequate to provide you with the skills you needed to effectively use your computer.
3. In order to better utilize the new technology, you enrolled in courses at a local community college. These courses included instruction on using a personal computer for the first time, an introduction to Windows 3.1, and intermediate/advanced Windows 3.1.
4. You intend to take additional computer training to allow you to fully utilize your personal computer.
5. You feel that this training is a legislative necessity, otherwise you would not take it.

## ISSUE

May the cost of computer training to enable a legislator to effectively use a state-provided personal computer be paid with principal campaign committee funds as a noncampaign disbursement for expenses of a public official for serving in office?

## OPINION

Yes; under the facts presented, training to enable you to use the personal computer provided is an expense of serving in public office. Such an expense is reported as a noncampaign disbursement under Minn. Stat. § 10A.01, subd. 10c(j).

You would not take these classes if you did not feel it was necessary for your legislative work. The training will assist you in acquiring the skills needed to better use computer technology in your performance as a legislator. Since you did not come to the legislature with these skills, this purpose is directly related to your service in public office.

THE FOLLOWING PUBLICATION DOES NOT IDENTIFY  
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA  
under Minn. Stat. § 10A.02, subd. 12(b)

Issued: April 25, 1997

RE: Potential conflict of interest for public official

ADVISORY OPINION # 267

SUMMARY

A potential conflict of interest exists under Minn. Stat. § 10A.07 only when an official is required to vote in an official capacity on a matter which will substantially affect the official's financial interests or those of an associated business in a greater way than it will affect similarly situated individuals or businesses.

FACTS

Several members of a state board (the State Board) ask the Ethical Practices Board for an advisory opinion based on the following facts:

1. As members of the State Board, you are public officials as defined in Minnesota Statutes, chapter 10A, and therefore are subject to the conflict of interest provisions of Minn. Stat. § 10A.07.
2. The State Board regulates the provision of certain services. In addition, it administers a grant program through which it makes grants for regional services projects. These grants may go to regional services boards or to other entities.
3. State Board members vote on the award of these grants, which are based on written proposals. If required, you would be permitted to abstain from a vote on a particular grant.
4. Sometimes a grant proposal will specify only the purpose for which the grant will be used, such as for research studies or training.
5. In other cases, the proposal may specify both the purpose of the grant and the name of the specific entity which will provide services or receive a sub-grant to be paid for with the grant, such as for a research study to be conducted by a particular organization.
6. In still other cases, the proposal may include a purpose, such as training, and a list of qualified vendors who may be paid to provide this training. In these cases, individuals taking the training select the particular vendor they want to use.
7. Some State Board members have other relationships as a result of their work in the services area regulated by the State Board. The following relationships may exist:
  - a. a member serves without compensation as a board member of a grant proposer;

- b. A member serves without compensation as a member of a grant proposer's advisory committee;
  - c. A member serves without compensation as a member of a local committee which will receive a sub-grant if a particular grant proposal is funded;
  - d. A member is compensated as the director or as an employee of a grant proposer;
  - e. A member is an employee of one or more counties, and is supervised by county commissioners, two of whom also serve on a regional services board. The regional services board is a proposer for a grant from the State Board. The individual counties will not receive sub-grants from the regional grant.
  - f. A member is compensated by, or owns securities in, a vendor named in a grant proposal as a sole provider of services which would be paid for with grant funds;
  - g. A member is compensated by, or owns securities in, one of several possible providers of training services which may be used by regional professionals in the services field and paid for with grant funds;
  - h. A member is compensated by, or owns securities in, an organization which is not named in a grant proposal, but which might benefit from the award of a particular grant.
8. You ask the Ethical Practices Board for an advisory opinion as to whether the described relationships create any potential conflicts of interest under Minn. Stat. § 10A.07 when you vote on the regional grants.

#### ISSUE

Which, if any, of the relationships described in the facts create potential conflicts of interest under Minn. Stat. § 10A.07?

#### OPINION

In order for a conflict of interest to exist under Minn. Stat. § 10A.07, three requirements must be met:

- 1. an official must be called upon to vote in an official capacity;
- 2. the vote must be on a matter which will substantially affect the official's financial interests or those of an associated business; and

3. the affect on the official or the associated business must be greater than the affect on other similarly situated individuals or businesses. Minn. Stat. § 10A.07.

The first requirement is met for all votes of State Board members, since they are public officials as defined in Minn. Stat. § 10A.01, subd. 18.

Requirements 2 and 3 may or may not be met in a particular situation depending on the affect the proposed grant would have on the associated business and on other similar businesses. Because the facts do not suggest that a vote on a grant proposal would affect the member's own financial interests, only the financial interests of associated businesses are considered in this opinion.

An associated business is one from which the official receives compensation of more than \$50 in a month, or in which the official owns securities worth at least \$2,500. Compensation does not include expense reimbursement. Minn. Stat. § 10A.01, subd. 4.

For the purpose of analysis in this opinion, we assume that if a State Board member is compensated by an entity, or owns securities in the entity, the compensation or securities ownership is sufficient to make the entity an associated business of the member. We also assume that unless specifically stated in the fact situation, the State Board member does not own securities in the entities under consideration.

With these principles in mind, we address each of the situations presented in the facts.

- a. A member serves without compensation as a board member of a grant proposer.  
  
No potential conflict of interest exists. The grant proposer is not an associated business of the member because no compensation is paid.
- b. A member serves without compensation as a member of a grant proposer's advisory committee;  
  
No potential conflict of interest exists. Neither the advisory committee nor the proposer is an associated business of the member because no consideration is paid.
- c. A member serves without compensation as a member of a local committee which will receive a sub-grant if a particular grant proposal is funded;  
  
No potential conflict of interest exists. The local committee is not an associated business of the member because no compensation is paid.
- d. A member is compensated as the director or as an employee of a grant proposer.  
  
A potential conflict of interest exists because the grant proposer is an associated business of the member, based on the payment of compensation. The award of the grant will affect the financial interests of the business, while other similar businesses will not benefit.
- e. A member is an employee of one or more counties and is supervised by the county commissioners, two of whom also serve on a regional services board. The regional services

board is a proposer for a grant from the State Board. The individual counties will not receive sub-grants from the regional grant.

No conflict of interest exists. Even if the counties were associated businesses of the member (a question about which we do not express an opinion), the counties' financial interests are not affected by the grant to the regional services board.

- f. A member is compensated by, or owns securities in, a vendor named in a grant proposal as a sole provider of services which would be paid for with grant funds.

A potential conflict of interest exists because the vendor named to be paid with grant funds is an associated business of the member based on payment of compensation or securities ownership. That vendor will benefit from the grant whereas other similarly situated vendors will not.

- g. A member is compensated by, or owns securities in, one of several possible vendors of training services which may be used by individuals and paid for with grant funds.

No potential conflict of interest exists. The vendor is an associated business of the State Board member based on payment of compensation or securities ownership; however, to create a conflict of interest, it is necessary that the action under consideration "would substantially affect" the associated business [emphasis added]. A grant for training services which may or may not be provided by a particular vendor will not necessarily affect that vendor. Even if some individuals use the vendor for training, it is not possible to say at the time of the vote that the affect of the grant award on the vendor's financial interests would be substantial.

- h. A member is compensated by, or owns securities in, an organization which is not named in a grant proposal, but which may benefit from the award of a particular grant.

No potential conflict of interest exists. There is an associated business of the State Board member, based on payment of compensation or securities ownership. However, it cannot be said at the time of the vote that awarding the grant will have a substantial effect on the unnamed organization.

In those cases where a potential conflict of interest exists, the State Board member must comply with the provisions of Minn. Stat. § 10A.07. If there is sufficient time before the vote, a member with a conflict must file a notice of the potential conflict with the Ethical Practices Board. If there is insufficient time to file the notice, the member must disclose the conflict to the State Board before the matter is discussed. In either case, the member must abstain from the vote, and may not chair the meeting or offer any motion or discussion on the matter. Minn. Rules. Part 4515.0500.

The Ethical Practices Board is aware that another statute also imposes conflict of interest restrictions on State Board members. That statute is not within the Ethical Practices Board's jurisdiction and we express no opinion on its application. However, we do note that the other statute is worded differently than §10A.07. Therefore, it is important to recognize that whether or not a potential conflict of interest exists under Chapter 10A is not relevant to determining whether the same situation creates a conflict of interest under the statute specifically applicable to the State Board.

THE FOLLOWING PUBLICATION DOES NOT IDENTIFY  
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA  
under Minn. Stat. § 10A.02, subd. 12(b)

**RE: Gift of transportation**

Issued: May 23, 1997

**ADVISORY OPINION # 268**

**SUMMARY**

A gift from a lobbyist principal to a nonprofit corporation which is not a lobbyist principal is not a prohibited gift when later transferred to an official if, at the time of the original gift, the donor was unaware of who would benefit from the gift and the circumstances demonstrate that the underlying purpose of the original gift was not to benefit one or more officials.

**FACTS**

As the representative of a Minnesota nonprofit corporation, you ask the Ethical Practices Board ("Board") for an advisory opinion based on the following facts:

1. The nonprofit corporation you represent ("the Corporation"), is a Minnesota nonprofit corporation which is also recognized by the Internal Revenue Service as a section 501(3)c nonprofit corporation.
2. The Corporation is working with a group of volunteers and others on a project to develop and fund a memorial for a former public official.
3. You are the project coordinator and are responsible for fundraising and marketing for the project. As a part of the fundraising efforts for the project, a benefit reception will be held out of the state of Minnesota.
4. You have arranged for a lobbyist principal to be a corporate sponsor of the benefit reception and to donate to the Corporation airline tickets to the benefit for up to 9 people. These tickets may be used by the Corporation as needed for staff, guests, family members, and others who you, as the project coordinator, determine should attend the event using the Corporation's tickets. The donor will not know who will use the tickets until advised by the Corporation of the passenger names.
5. You have determined that it would be appropriate for one of the Corporation's tickets to be used by an individual who is an official under Minn. Stat. § 10A.071.
6. You are not a lobbyist under Minn. Stat. § 10A.01, subd. 11. The Corporation is not a lobbyist principal under Minn. Stat. § 10A.01, subd. 28, however, the donor of the tickets is a lobbyist principal.

## ISSUE

May the nonprofit Corporation give an airline ticket to an official if the ticket was originally a gift to the Corporation from a lobbyist principal?

## OPINION

Yes, the Corporation may give an airline ticket to an official under the specific facts presented.

Minn. Stat. § 10A.071 prohibits gifts given to officials by, or at the request of, lobbyists and lobbyist principals. In this case, the contemplated gift from the lobbyist principal will be a gift to a nonprofit corporation recognized under both Minnesota and federal tax law as a separate legal entity.

The gift is made under specific circumstances which demonstrate that its underlying purpose is not to benefit a particular official or group of officials. Thus, the transaction is recognized as a gift to the Corporation, not to an official who may later benefit from the Corporation's own subsequent gift of the item.

THE FOLLOWING PUBLICATION DOES NOT IDENTIFY  
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA  
under Minn. Stat. § 10A.02, subd. 12(b)

**RE: Gift of informational audio tape to legislators**

Issued: May 23, 1997

**ADVISORY OPINION # 269**

**SUMMARY**

A gift to legislators of an audio tape which costs \$1.50 to produce and will be available to the public for between \$4 and \$6 falls within the exception to the gift prohibitions of Minn. Stat. § 10A.071 because it is a gift of informational materials of unexceptional value.

**FACTS**

As the representative of an organization, you ask the Ethical Practices Board for an advisory opinion based on the following facts:

1. The organization you work for is a lobbyist principal which is involved in public policy matters. Among other activities, the organization conducts educational forums on issues which it believes may be relevant to matters before the Minnesota legislature.
2. The organization video tapes each forum for its own use. As a component of the video taping, an audio tape is also made.
3. From time to time the organization would like to duplicate the audio tape of a forum which it believes is relevant and distribute the tape without charge to all Minnesota legislators.
4. It will cost the organization approximately \$1.50 for each copy of an audio tape. It is your intention to deliver the tapes to the capitol so that there will be no cost for packaging or mailing.
5. The same company that will duplicate the tapes for the organization will also make them available to the public. The cost to the public will be between \$4 and \$6 per tape, depending on the number of people requesting a tape. This cost includes packaging and mailing.

**ISSUE**

May the organization provide a free copy of an audio tape of one of its programs to a legislator without violating Minn. Stat. § 10A.071?

**OPINION**

Yes, the organization may provide the tapes to legislators without charge. Each tape is of unexceptional value and is, thus, exempt from the general gift prohibition pursuant to Minn. Stat. § 10A.071, subd. 3(A)(6).



THE FOLLOWING PUBLICATION DOES NOT IDENTIFY  
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA  
under Minn. Stat. § 10A.02, subd. 12(b)

**RE: Sale of goods by individual to party unit**

Issued: May 23, 1997

**ADVISORY OPINION # 270**

**SUMMARY**

A sale of a product by an individual to a party unit for less than full retail value results in a donation in kind by the individual to the party unit in the amount which is the difference between the sale price and the full retail value.

**FACTS**

You ask the Ethical Practices Board ("Board") for an advisory opinion based on the following facts:

1. You have a product that you developed and sell.
2. You would like to sell this product to a party unit at a price which is less than its full retail value.
3. You are an incumbent legislator with a principal campaign committee registered with the Board.

**ISSUES**

May you sell your product to a party unit at less than full retail value price? Does your status as a legislator affect the application of Chapter 10A to the sale of this product?

**OPINION**

Chapter 10A does not prohibit an individual from selling a product to a party unit at any agreed upon price. If the price is less than full retail value, the difference is a donation in kind from the individual to the party unit. Minn. Stat. § 10A.01, subd. 7b.

Since the contribution is from an individual rather than from a candidate's principal campaign committee, there is no reporting of the transaction by the seller (although the party unit must report both the cash purchase and the donation in kind).

The conclusions reached here are applicable to any sale to a party unit. The result is not dependent on the individual seller's status as a candidate or a legislator.



THE FOLLOWING PUBLICATION DOES NOT IDENTIFY  
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA  
under Minn. Stat. § 10A.02, subd. 12(b)

**RE: Disposition of political committee assets**

Issued: June 27, 1997

**ADVISORY OPINION # 271**

**SUMMARY**

Issue of whether a political committee may make large contributions to nonprofit organizations arises under Minnesota Statutes, chapter 211B, which is not within the jurisdiction of the Board. Under circumstances described, return of contributions to original sources by the political committee is an appropriate noncampaign disbursement.

**FACTS**

As the Treasurer of a political committee (the "Committee") registered with the Ethical Practices Board (the "Board"), you ask the Board for an advisory opinion based on the following facts:

1. The Committee has been in existence for a number of years and has raised money through individual contributions.
2. The Committee now wants to dispose of its remaining funds and to terminate its registration. The Committee has approximately \$28,000 which it must liquidate.
3. In addition to making a number of contributions to candidates, the Committee is considering making larger contributions to nonprofit organizations whose activities may relate to the election process. For example, the Committee suggests it might consider a contribution to a public higher education institution to fund scholarships in the field of public policy study or a contribution to a non-partisan organization engaged in the promotion of the election process in general. These organizations would not be political committees or political funds registered with the Board.
4. The Committee would also like to liquidate part of its funds by returning contributions to their original sources. In doing so, the Committee would begin with the most recent year in which contributions were accepted and would return all or an equally pro rated amount of each contribution. If all contributions for a given year are returned, the Committee would repeat the process for the preceding year until available funds are exhausted.
5. The Committee is not the principal campaign committee of a candidate, nor is it a party unit committee, so no part of any contribution to the Committee has been returned to the contributor under the political contribution refund program.

6. You expect to conclude the Committee's termination shortly after the Board issues its opinion in this matter.

### ISSUE ONE

May the Committee make contributions of Committee funds to nonprofit organizations which are not political committees or political funds registered with the Board?

### OPINION

Use of political committee funds in general is governed primarily by Minnesota Statutes, chapter 211B, the Fair Campaign Practices Act, which is not under the Board's jurisdiction. To determine whether the proposed use is permitted under chapter 211B, you will need to consult your own legal advisors.

Use of political committee funds for certain limited purposes, characterized as noncampaign disbursements, is governed by the Board. The proposed contributions to nonprofit organizations are not included in any noncampaign disbursement recognized by the Board.

### ISSUE TWO

May the Committee return contributions to the original sources under the plan proposed by the Committee?

### OPINION

Yes, the Committee may return contributions to their original sources based on the proposed plan.

Return of a contribution to its source is permitted under Minn. Stat. § 10A.01, subd. 10c(b). However, the right to make such returns has always been considered to be restricted by Minn. Stat. § 10A.15, subd. 3, to the period ending 60 days after deposit of the contribution.

In this particular case, we note the following:

The Committee is neither a principal campaign committee nor a party unit; thus it has not been entitled to participate in the State's political contribution refund program. For that reason, there is no chance the Committee will be returning money which has also been refunded to the contributor by the State.

The Committee is in the process of terminating and has represented that it will complete its termination shortly after issuance of this Opinion.

The Committee's plan will result in the return of all contributions from a given year, or an equally pro rated share of each contribution. Thus the Committee will not engage in the selective return of contributions.

No contributor will receive a return greater than the original contribution.

Under these particular circumstances, Minn. Stat. § 10A.01, subd. 10c(b) is applicable without regard to any restriction imposed by Minn. Stat. § 10A.15. This same conclusion may not be reached, however, under circumstances differing from those presented here.

The returns made based on this opinion are recognized as a return of the original contributor's donation. Thus, if a contribution is returned to an individual who is a candidate under Chapter 10A, the return does not constitute a contribution from the Committee to the candidate.



**ADVISORY OPINION REQUEST #272**

**This advisory opinion request was withdrawn by the requester prior to the Board's issuance of an opinion.**

The request is nonpublic data under Minn. Stat. § 10A.02, subd. 12(b)