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## **ADVISORY OPINIONS**

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

**July 1, 2002– June 30, 2003  
Numbers 342 – 348**

**October 2, 2003**

### **MINNESOTA CAMPAIGN FINANCE and PUBLIC DISCLOSURE BOARD**

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## ABOUT ADVISORY OPINIONS

- The Campaign Finance and Public Disclosure Board is authorized to issue advisory opinions on the requirements of the Ethics in Government Act, Minnesota Statute Chapter 10A (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 to guide their actions in compliance with these laws.
- A request for an advisory opinion and the opinion itself are private data. The Board provides a *Consent to Release Information* form to individuals requesting opinions as part of the procedures under this law. If the requester does not consent to the publication of the requester's identity, the Board generally publishes a public version of the opinion which does not identify the requester.
- 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 initiation 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.

## ABOUT THE BOARD

### Mission Statement

- To promote public confidence in state government decision-making through development, administration, and enforcement of disclosure and public financing programs which will ensure public access to and understanding of 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;
- Two former legislators of different political parties;
- 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.

## TABLE OF CONTENTS

<u>Number</u>	<u>Program</u>	<u>Subject</u>	<u>Page</u>
342	Campaign Finance	Mailings to members of an organization for the purpose of influencing the nomination or election of a candidate is a campaign expenditure that must be made through a political committee.	5
343	Campaign Finance	Corporations may contribute funds and services to a political committee or political fund registered to promote a constitutional amendment.	7
344	Campaign Finance	Judicial districts may not organize and register as a political party unit under Chapter 10A.	11
345	Conflict of Interest	Potential Conflict of Interest from an associated business.	13
346	Campaign Finance	Noncampaign Disbursements for expenses of a Transition Office.	15
347	Lobbyist	Reporting the Cost of Producing and Disseminating Information Related to Legislative Action as a Lobbying Disbursement	19
348	Lobbyist	Reporting the Cost of Producing and Disseminating Information Related to Legislative Action as a Lobbying Disbursement	21



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

Issued: August 28, 2002

**RE: Mailings to members of an organization for the purpose of influencing the nomination or election of a candidate is a campaign expenditure that must be made through a political committee.**

**ADVISORY OPINION 342**

**SUMMARY**

A mailing to members of an association that supports a legislator and announces that the legislator received an award for his voting history is a campaign expenditure that influences the nomination or election of the legislator. This is true even if the award is based on a ranking of legislative voting that is not in itself intended to influence the outcome of an election.

**FACTS**

As the State Director for an association, and the treasurer for a registered political committee, you ask the Campaign Finance and Public Disclosure Board (the Board) for an advisory opinion based on the following facts:

1. The association does not provide administrative support to the registered political committee, but the organizations are associated.
2. The association rates voting records for Minnesota legislators, and may issue awards to legislators based on their voting record. The association would like to do a mailing (example attached to request) to members of the association announcing that certain legislators have, based on their voting record, received an award. The mailing will be legislative district specific, so that only members who reside in the district of a legislator(s) receiving an award will receive the mailing.
3. The political committee endorses candidates, and sends mailings to members announcing endorsed candidates. The political committee has considered these mailings campaign expenditures and reports them as such to the Board.

**ISSUE ONE**

If the association sends some or all of its members the example announcement of a legislator earning an award from the association, is the cost of the mailing a campaign expenditure?

**OPINION**

In the example provided to the Board, members of the organization learn from the mailing that a legislator has earned the award based on their voting record over the last two years. The

mailing goes on to extol the understanding the legislator has of the role of the association in the Minnesota economy, and to explain that the legislator is a good friend of the association and a real supporter of the association.

The award given to the legislator, the listing of the positive qualities of the legislator, and that the mailing announcing the award is sent by district to members who can vote for the legislator goes beyond merely announcing an informational scorecard of legislative voting history. Using the example provided by the association, the Board concludes that the mailing would be a campaign expenditure that must be paid with political committee funds.

The Board recognizes that many organizations wish to evaluate the voting record of legislators against an ideal voting record as defined by the organization. Legislative "scorecards" that track and rank the voting records of legislators are assumed to be educational in nature if presented as factual information to members of the organization, or to the general public at large. However, the inclusion of the legislative scorecard, or any other educational information, does not make a mailing immune from classification as a campaign expenditure if other material or statements in the mailing have the clear purpose of influencing the nomination or election of a candidate.

## **ISSUE TWO**

May an association send out letters, newsletters, or other publications to members only, reporting on a lawmakers past voting performance as measured against the association's rating criteria, and not have it counted as a political committee expenditure?

## **OPINION**

Providing a legislative scorecard that contains information on the voting record of members of the legislator when compared to an ideal voting record as defined by an association is not necessarily a campaign expenditure. An association may have purposes that are not campaign related to inform its membership of legislative voting records.

When the legislative scorecard is used as a tool, or part of an overall effort, to influence the nomination or election of a candidate, it becomes a campaign expenditure as defined in Minn. Stat. §10A.01, subd. 9. Campaign expenditures must be made through a registered political committee.

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

Issued: September 25, 2003

**RE: Corporations may contribute funds and services to a political committee or political fund registered to promote a constitutional amendment.**

**ADVISORY OPINION 343**

**SUMMARY**

Political committees and political funds (committees) may receive corporate contributions if the committee limits its activities to supporting or opposing a constitutional amendment. Corporations do not need to register with the Board, or provide disclosure to political committees to which the corporation has contributed.

**FACTS**

As an attorney representing an entity organized as a 501 (c)(4) nonprofit corporation with the Internal Revenue Service (the Organization), you ask the Campaign Finance and Public Disclosure Board (the Board) for an advisory opinion based on the following facts:

1. The Organization does not currently have a political committee registered with the Board, but intends to create a political committee to support a statewide ballot question (constitutional amendment) that may be placed on the ballot by the Minnesota legislature at a future election.
2. The Organization anticipates receiving a donation from another entity that is registered as a 501 (c)(3) nonprofit corporation. The entity making the donation will request that the funds be forwarded to the political committee once it is registered with the Board. In its Report of Receipts and Expenditures to the Board, the political committee will report the entity that made the original donation and that the donation came through the Organization.
3. The Organization anticipates receiving a donation from a corporation that is to be used to support state ballot question political committees throughout the country. With the consent of the corporation making the donation, the Organization intends to forward part of the donation to the political committee that will be organized in Minnesota. The political committee would report the corporation that made the original donation, and that the donation came through the Organization.
4. The Organization is aware of an individual donor who wishes to make a contribution of stock to the political committee once it is registered. The political committee does not anticipate having a brokerage account that can accept or sell stock. With direction from the donor the Organization will accept and sell the stock, then forward the proceeds to

the political committee once it is registered. The political committee would report the individual who donated the stock, and that the donation came through the organization.

### ISSUE ONE

If the political committee accepts and reports the donations as described in the facts of this opinion, will it have violated the Minnesota Ethics in Government Act (Chapter 10A)?

### OPINION

When determining the legality of a donation under the provisions of Chapter 10A it is necessary to consider the following questions: Is the donation from a prohibited source? Is the donation made in a way that attempts to circumvent the limits found in the provisions of Chapter 10A? Is the donation reported to the Board with the proper disclosure?

Although the Board cannot offer an advisory opinion on a statutory provision outside of its jurisdiction, it may reference statutes that affect the administration of Chapter 10A. Such a statute is Minn. Stat. §211B.15, subd. 4, which provides that corporations may make contributions or expenditures to promote or defeat a ballot question. In advisory opinion 257 (copy attached) the Board found that the specific authorization found for corporate involvement in ballot questions found in Chapter 211B extends to political committees registered under Chapter 10A to promote or defeat a constitutional amendment. The Board continues to believe that Minn. Stat. §211B, subd. 4, is the authoritative statute for corporate expenditures on ballot questions, and that in effect such activities are outside of Chapter 10A. It is important to note that a political committee that accepts corporate donations must limit its scope to the promotion or defeat of ballot questions. If a political committee that accepts corporate donations makes contributions to candidates, or makes independent expenditures for or against candidates, it will have violated the prohibition on corporate contributions to candidates provided in Minn. Stat. §211B.15, subs. 2 and 4.

The routing of donations through the Organization until the political committee is registered, or to make the conversion of stock to cash easier for the political committee, is allowable because restrictions in Chapter 10A against routing donations to a candidate through a third party do not apply to the Organization or the political committee that will be created. For example, the prohibition on earmarking contained in Minn. Stat. §10A.16 applies to contributions made with the condition that they be forwarded to a particular candidate; the statute does not extend to ballot questions. Similarly, Minn. Stat. §10A.29 which prohibits making a contribution through or on behalf of another individual or association in order to circumvent the contribution limits contained in Chapter 10A does not apply because there are no limits on corporate contributions to ballot question committees to be circumvented.

The disclosure of donations and expenditures provided by political committees registered with the Board to promote or defeat a constitutional amendment is the same as that required of a political committee created to elect or defeat candidates. That disclosure includes itemization of the name and address of any entity, including corporations, that contributes over \$100 to the committee. However, as explained in detail in Advisory Opinion 257, the Board does not view corporations as a type of unregistered association. This means that the disclosure required of unregistered associations in Minn. Stat. §10A.27, subd. 13 (a), does not apply to corporations.

Therefore, the anticipated contributions and reporting described in the facts of this opinion either meet the requirements of Chapter 10A, or are outside of its regulatory authority.

## **ISSUE TWO**

If the Organization makes the donations described in the facts of this opinion, will the Organization need to register with the Board as a political committee?

## **OPINION**

No. A political committee that accepts contributions and/or makes expenditures to support or defeat a constitutional amendment must register with the Board within 14 days of its first contribution or expenditure in excess of \$100. A corporation contributing to the political committee need not disclose sources of income or other expenditures to the Board.

The Board notes that in Minnesota only the state legislature can place a constitutional amendment on the ballot. As provided in Minn. Stat. §10A.01, subd. 7 promoting a ballot question includes activities that qualify the question for placement on the ballot. Individuals employed by a political committee, or by the Organization, to influence the legislature to place a proposed amendment on the ballot are required to register with the Board as a lobbyist if the individual spends the amount of time or money provided in Minn. Stat. §10A.01, subd. 21 (a). Lobbyist must report on their lobbying disbursements to the Board three times a year. Additionally a political committee or corporation that employs a lobbyist must submit a lobbyist principal report to the Board annually that contains the information required by Minn. Stat. §10A.04, subd. 6.



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

Issued: October 23, 2002

**RE: Judicial districts may not organize and register as a political party unit under Chapter 10A.**

### **ADVISORY OPINION 344**

#### **SUMMARY**

To qualify for registration as a party unit with the Campaign Finance and Public Disclosure Board the party unit must be organized within one of the geographic or political districts provided in Chapter 10A. However, a political party is free to organize a party unit on any basis that the party recognizes.

#### **FACTS**

As an attorney representing a political committee registered with the Campaign Finance and Public Disclosure Board (the Board), you ask for an advisory opinion based on the following facts:

1. The political committee wishes to modify its registration so as to be registered as a political party unit. Political party units are eligible to issue Political Contribution Refund (PCR) receipts to Minnesota residents that contribute funds to the party unit.
2. The political committee is organized to represent a Minnesota Judicial District.
3. A major political party recognizes the committee.
4. The committee is willing to sub-organize and register by county in order to be recognized as party units by the Board.

#### **ISSUE ONE**

May the committee register with the Board as a political party unit?

#### **OPINION**

No. In order to register with the Board as a political party unit an organization must meet the definition provided for political party units provided in Minn. Stat. §10A.01, subd. 30:

**Political party unit or party unit.** "Political party unit" or "party unit" means the state committee or the party organization within a house of the legislature, congressional district, county, legislative district, municipality, or precinct.

The statute specifically itemizes the political organizations around which a political party unit can organize and register with the Board.

The Board notes that Minn. Stat. §10A.01, subd. 30, does not prohibit a political party from recognizing party units, or organizing itself in any manner that the party views as appropriate. For example nothing in the statute prohibits a party from organizing by gender, race, age, or as in this case, by judicial district. What the statute does regulate is which party units may issue PCR receipts to contributors. Given that the PCR receipt program is used to refund private individuals with public funds it is not unreasonable that the state regulate the party units that may issue the receipts.

#### **ISSUE TWO**

If the committee sub-organizes by county, may the county subunits register as political party units with the Board?

#### **OPINION**

No. Minn. Stat. §10A.01, subd. 30, recognizes a county as a valid district within which a party unit may organize and register with the Board, for example the Carver County Party Unit. The statute does not permit counties to be used as building blocks in creating additional districts for purposes of registering a political party unit with the Board.

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

Issued: November 20, 2002

RE: Potential Conflict of Interest from an associated business.

**ADVISORY OPINION 345**

**SUMMARY**

Serving on both a state board and as an employee of an organization that receives funding from organizations that are regulated by the state board creates the potential for a conflict of interest. For an action or decision of a board member to be a conflict of interest the board member, or an organization that employs the board member, must benefit from the action or decision to a greater extent than any other individual or organization in the same business, profession, or occupation.

**FACTS**

As the Executive Director of a state board whose members are public officials, you ask the Campaign Finance and Public Disclosure Board for an advisory opinion based on the following facts:

1. The state board promulgates administrative rules, issues licenses, and can impose penalties for violations of statutes or rules.
2. An organization not licensed by the state board has hired a board member to serve as its executive director. As executive director the board member will receive compensation of approximately \$6,000 to \$9,600 annually.
3. The organization receives funding from entities that are licensed and regulated by the state board.

**ISSUE ONE**

Will serving as a member of the state board and as the executive director of the organization create a conflict of interest under the provisions of Chapter 10A?

**OPINION**

In determining if there is a conflict of interest that requires a public official to take the steps provided in Minn. Stat. §10A.07, two issues must be considered, 1) is the relationship in question covered by the provisions of the statute, and 2) will the specific action or decision of the public official constitute a conflict of interest? From the facts provided serving as the executive director of the organization makes the organization an "associated business" of the board member. This is because an associated business is defined in Minn. Stat. §10A.01,

subd. 5, as any association that pays an individual more than \$50 in any month for compensation as service as a director or employee of the association. Any action or decision made by the board member that will substantially affect the financial interest of an associated business, regardless of whether there is a direct impact on the compensation or personal financial interests of the board member, is an action that must be evaluated as a potential conflict of interest.

For the specific action or decision of the board member to present a conflict of interest it must affect the financial interests of the board member or of the organization more than any other individual or organization in a similar business classification, profession or occupation. Any action or decision that does not meet that threshold is not a conflict of interest under the provisions of Minn. Stat. §10A.07. As submitted the advisory opinion request does not provide a specific action or decision and what affect a decision may have on the financial interests of the organization or the board member. Therefore the board cannot address whether a conflict of interest currently exists.

If in the future, the board member concludes that an upcoming action or decision of the state board will constitute a conflict of interest the board member must take the actions required in Minn. Stat. §10A.07 subd. 1 and 2. Those actions include preparing a written statement describing the matter requiring an action or decision and the conflict of interest it creates and providing the statement to the chair of the state board. If there is insufficient time to prepare a written statement the board member must orally inform the state board of the conflict. If possible the board member must abstain from influencing the action or decision that causes the conflict of interest. If the governing rules of the state board do not permit a board member to abstain, or if for some other reason the board member cannot abstain, a written statement describing the conflict of interest and the action taken must be filed with the Campaign Finance and Public Disclosure Board within a week of the action taken.

THIS ADVISORY OPINION IS PUBLIC DATA PURSUANT TO A  
CONSENT FOR RELEASE OF INFORMATION SIGNED BY THE REQUESTER

**Issued to:** Christopher Dietzen  
Larkin, Hoffman, Daly & Lindgren, Ltd.  
1500 Wells Fargo Plaza  
7900 Xerxes Avenue South  
Bloomington, MN 55431-1194

**Issued:** November 20, 2002

**RE: Noncampaign Disbursements for expenses of a Transition Office.**

**ADVISORY OPINION 346**

**SUMMARY**

Certain expenses related to the operation of a transition office may be paid by the principal campaign committee of the candidates and reported as non-campaign disbursements.

**FACTS**

As the legal representative for Governor- Elect Tim Pawlenty, you ask the Campaign Finance and Public Disclosure Board (the Board), for an advisory opinion based on the following facts:

1. Governor-Elect Tim Pawlenty has assembled a Pawlenty/Molnau Transition Office (the transition) to prepare for the change in administrations.
2. The Pawlenty for Governor Committee (Committee) has funds available that could be used to support certain efforts of the transition.

**FORWARD**

Before addressing the specific questions contained in this advisory request, it is useful to review the statutory provisions used by the Board to determine if a particular expenditure by a principal campaign committee is appropriate. Generally, funds in a candidate's principal campaign committee may only be used for expenditures related to the conduct of an election campaign as listed in Minn. Stat. §211B.12, specific noncampaign disbursements contained in Minn. Stat. §10A.01, subd. 26, or other activity that the Board determines involves a noncampaign disbursement within the meaning of subdivision 26. Other expenditures may be either a prohibited expenditure or a conversion to personal use. Costs of the transition are not related to the conduct of an election campaign, therefore, the Board must determine whether activities of the transition may be classified as one or more of the existing statutory noncampaign disbursements, or the Board may specify in this opinion additional types of expenditures and noncampaign disbursements, under Minn. Stat. §10A.01, subd. 26, (18)

The function of the transition is to insure a smooth transfer of power, a continuation of government services, and to provide that the new Governor can effectively serve in office. Therefore, some of the expenses of the transition may be seen as a cost of serving as Governor. Costs incurred by a candidate because the candidate is serving in public office are allowable noncampaign

disbursements under Minn. Stat. §10A.01, subd. 26, (9), and may be paid for with principal campaign committee funds. In Advisory Opinion 253 the Board concluded that a winning non-incumbent candidate could incur costs of serving in office before the candidate is sworn into that office. The Board relies on the concepts of that opinion in its response to the current request.

All expenditures paid with principal campaign committee funds, including noncampaign disbursements, must be disclosed on the Report of Receipts and Expenditures (Report) of the principal campaign committee. When reporting a noncampaign disbursement with a value of over \$100 a principal campaign committee must identify the purpose of the expenditure to justify the specific classification as a noncampaign disbursement (Minn. Rules 4503.0900, subp. 3), as well as the name and address of the vendor or recipient of such disbursements.

### **ISSUE ONE**

May the Committee use its funds to pay for staff salaries of the transition?

#### **OPINION**

Yes. In order to carry out its function the transition must employ full time staff for a wide variety of activities. Staffing costs may be classified and reported as noncampaign disbursements under Minn. Stat. §10A.01, subd. 26, (9).

### **ISSUE TWO**

May the Committee use its funds to pay for accounting and legal services of the transition?

#### **OPINION**

Yes. Ensuring that the transition operates within various statutory provisions and is able to account for its expenses are necessary costs. Accounting and legal services used by the transition may be classified and reported as noncampaign disbursements under Minn. Stat. §10A.01, subd. 26, (9). Such costs should be reported separately from any legal or accounting expenditures made directly on behalf of the Pawlenty for Governor Committee. Accounting and legal services for the Pawlenty for Governor Committee should be reported as noncampaign disbursements under Minn. Stat. §10A.01, subd. 26, (1).

### **ISSUE THREE**

May the Committee use its funds to pay for the purchase or leasing of office equipment (cell phones, computers, photocopying services, etc.) of the Transition Office?

#### **OPINION**

Yes. To effectively carry out its function, the transition will need standard office equipment. However, equipment purchased for the transition with campaign funds becomes the property of the Pawlenty for Governor Committee. Any equipment purchased as a noncampaign disbursement cannot be later used for campaign purposes. The Committee may wish to lease the necessary office equipment to avoid the problems associated with tracking the use, and eventual disposal, of equipment after the transition period is concluded. The cost of purchase

or lease of office equipment used for the transition should be reported as noncampaign disbursements under Minn. Stat. §10A.01, subd. 26, (9).

#### **ISSUE FOUR**

May the Committee use its funds to pay for books, periodicals, and other materials used in the transition?

#### **OPINION**

Yes. In its answer, the Board assumes that books and periodicals purchased for the transition will be used as reference materials in conducting office functions and that "other materials" are office supplies commonly used in running any office. The cost of purchasing reference materials and general office supplies are reasonable costs necessary to carry out the function of the transition. The cost of reference material and office supplies used by the transition should be reported as noncampaign disbursements under Minn. Stat. §10A.01, subd. 26, (9).

#### **ISSUE FIVE**

May the Committee use its funds to pay for airfare, lodging and conference costs associated with Tim Pawlenty and Carol Molnau attending a national Governor's Conference?

#### **OPINION**

Yes. Costs of attending a Governor's Conference are clearly related to serving in that office. Such costs may be paid for by the Committee and reported as noncampaign disbursements under Minn. Stat. §10A.01, subd. 26, (9).

#### **ISSUE SIX**

May the Committee use its funds to pay for meals associated with interviewing candidates for various positions in the administration?

#### **OPINION**

No. Interviewing candidates over a meal may be seen as a common courtesy, however meals are not a required part of the interview process. Paying for meals with Committee funds may violate the conversion to personal use prohibition in Minn. Stat. §211B.12.

#### **ISSUE SEVEN**

May the Committee use its funds to pay for other expenses that are incurred by the transition in providing constituent services to the citizens of Minnesota?

#### **OPINION**

Without knowing the specific services that may be provided, the Board is unable to determine if such expenses may be reported as noncampaign disbursements or if the use of Committee funds is appropriate. Generally, constituent services are classified as noncampaign

disbursements only if they occur "from the beginning of the term of office to adjournment sine die of the legislature in the election year for the office held" (Minn. Stat. §10A.01, subd. 26, (6)).

#### **ISSUE EIGHT**

May the Committee use its funds to pay for other expenses incurred by the transition if they qualify as a noncampaign disbursement?

#### **OPINION**

Without knowing which specific noncampaign disbursement will be made, the Board is unable to determine if the expenses may be classified as noncampaign disbursements.

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

Issued: February 24, 2003

**RE: Reporting the Cost of Producing and Disseminating Information Related to  
Legislative Action as a Lobbying Disbursement.**

### **ADVISORY OPINION 347**

#### **SUMMARY**

The cost of producing and distributing a video that provides information about an issue before the legislature is a lobbying disbursement that must be disclosed on the Annual Report Lobbyist Principal and on a periodic Lobbyist Disbursement Report.

#### **FACTS**

As the legal representative for an association, you ask the Campaign Finance and Public Disclosure Board (the Board), for an advisory opinion based on the following facts:

1. The association is a nonprofit advocacy organization. The organization is involved in the legislative process, is a lobbyist principal, and has lobbyists registered with the Board.
2. In 1995 the association produced a video for use in urging association membership to contact their legislators.
3. In its current modified form the video does not specifically urge viewers to contact members of the state legislature. The video does provide screen text asking viewers to take actions that, in the context of the video, are related to potential legislative action. The body of the video relates a state program to issues that are of concern to members of the association.
4. Members of the association view the video in its current form as educational in nature.
5. Members of the association plan to air the modified version of the video at meetings. Local cable television stations may also use the video.

#### **ISSUE ONE**

Does the video constitute a lobbying expenditure based on its content and purpose?

## **OPINION**

Yes. Minnesota Statutes §10A.04, subd. 6 (c) (2), provides in part that a lobbyist principal must report "all expenditures for advertising, mailing, research, analysis, compilation and dissemination of information, and public relations campaigns related to legislative action..." Specific words or phrases are not required to classify material as a reportable lobbying disbursement. The need to report material as a lobbying disbursement depends on whether the purpose of the material is tied to some action of the legislature. The association may view the video as educational, however it is also intended to alert viewers of the possible consequences of pending legislative action. As such, the video is "dissemination of information...related to legislative action" under the statute.

## **ISSUE TWO**

If the video is a reportable lobbying expenditure must the association report expenses associated with producing the spot in 1995 or only the costs associated with its modification and distribution in 2003?

## **OPINION**

If the association included the cost of producing and distributing the video in 1995 in its annual report of lobbying disbursements, then only the additional cost to modify and distribute the video in its current form is reportable in 2003. If the initial production cost was not reported in 1995, then the total cost of initial production, modification, and distribution is reportable in 2003.

The designated lobbyist of the association must report the cost of producing and distributing the video on the lobbyist's Lobbying Disbursement Report (Minn. Rules 4511.0500, Subp. 2, (A)). The designated lobbyist would include the video production and video costs under the "lobbying materials" disbursement category (Minn. Rules 411.0600, Subp. 5, (A)).

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

Issued: May 28, 2003

**RE: Acceptance of Gifts by a Local Official in a Metropolitan Governmental Unit**

### **ADVISORY OPINION 348**

#### **SUMMARY**

A metropolitan governmental unit may not retroactively accept gifts to local officials in order to make the gifts permissible under the provisions of Minn. Stat. §10A.071.

#### **FACTS**

As a local official of a metropolitan governmental unit you ask the Campaign Finance and Public Disclosure Board (the Board), for an advisory opinion based on the following hypothetical facts:

1. As an elected local official of a metropolitan governmental unit you accept an offer to fly on a private plane for the purpose of attending an out of state event. You also accept a ticket to attend the event.
2. You do not pay for either the cost of the flight or the ticket to the event.
3. The association that provides the ticket to the event has a lease and a service contract with the metropolitan governmental unit.
4. The owner of the private plane has a financial interest in the association, and is part owner of another business that is in litigation with the governmental unit.
5. While out of state you conduct business for the governmental unit by attending a meeting.
6. While attending the event you meet with business leaders to discuss the state of local business and to promote the metropolitan governmental unit.
7. The metropolitan governmental unit did not take action to accept the plane ride or event ticket as gifts to the governmental unit prior to their use. The metropolitan governmental unit may take action to accept the plane ride and event ticket as gifts to the governmental unit after they have been used.

## ISSUE ONE

If you conduct government business or promote the metropolitan governmental unit, may you accept the event ticket and plane ride?

### OPINION

No. A local official in a metropolitan governmental unit may not accept gifts under Minn. Stat. §10A.071 if they are given by a lobbyist, a lobbyist principal, or are given at the request of a lobbyist or lobbyist principal. Board records show that the association that provided the event ticket, and organizations affiliated with the association, employ registered lobbyists. Therefore, a game ticket provided by the team is a prohibited gift from a lobbyist principal.

As provided in the facts of this opinion an individual who has a financial interest in the association that provided the event ticket provided the use of his personal airplane for the flight. A financial interest in, or employment by, an association that is a lobbyist principal does not in itself make an individual a lobbyist (See Advisory Opinions 177 and 201). If the use of the airplane was not at the request of a lobbyist, or any association that is, or should be, registered as a lobbyist "principal" as defined in Minn. Stat. §10A.01, subd. 33, then the transportation to the out of state event was not prohibited under Minn. Stat. §10A.071. However, if an individual provides a gift at the request of a lobbyist or lobbyist principal, or is reimbursed for the cost of the gift by a lobbyist or lobbyist principal, then the individual is a conduit for the gift that does not change its prohibited status (Minnesota Rules 4512.0300). The facts provided for this opinion are insufficient for the Board to conclude whether the use of the plane would be a prohibited gift under Chapter 10A.

The Board has consistently found that the cost of attending a meeting or conference provided by a lobbyist or lobbyist principal to an official is a prohibited gift that does not fall within the exceptions to the gift prohibition provided in Minn. Stat. §10A.071, subd. 3, (See Advisory Opinions 155, 163, 168, 172, 175, 179, 186, and 206). Attending a conference or meeting at which government business is conducted does not make the travel to the conference or meeting exempt from the gift prohibition contained in Minn. Stat. §10A.071.

## ISSUE TWO

May the governing body of the metropolitan governmental unit accept the gifts on behalf of the governmental unit after I have used them?

### OPINION

No. Retroactive acceptance of a gift(s) used by an official does not change the nature of the gift, or override the gift prohibition contained in Minn. Stat. §10A.071. As a state statute the provisions of Minn. Stat. §10A.071 may not be modified or nullified by local ordinance or resolution.

### **ISSUE THREE**

May the governing body of the metropolitan governmental unit pass a resolution to accept an offered service from a lobbyist or a lobbyist principal as a gift to the governmental unit, if only local officials of the governmental unit are expected to use the gift?

#### **OPINION**

No. If the gift is provided for the use of local officials it may not be accepted even if it is the governing body (made up of local officials) that determines which specific official will use the gift. It is possible that a lobbyist or lobbyist principal could make a gift to the metropolitan governmental unit that would not violate Minn. Stat. §10A.071 if the gift is made without knowledge or condition as to which individuals will use the service, and if the gift is made in such a way that it is not targeted for the use of local officials. A metropolitan governmental unit may wish to ask for another advisory opinion based on the specific facts of an offered gift if there are questions as to whether the gift is appropriate.

#### **NOTE**

The Board notes that Minn. Stat. §471.895, prohibits local official from accepting gifts from individuals who are not lobbyists under certain circumstances. This statute is not under the Board's jurisdiction. You are advised to consult your own legal advisors with regard to its possible application to the facts you presented.

