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## **ADVISORY OPINIONS**

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

**July 1, 2003– June 30, 2004**

**Numbers 349 – 358**

**July 28, 2004**

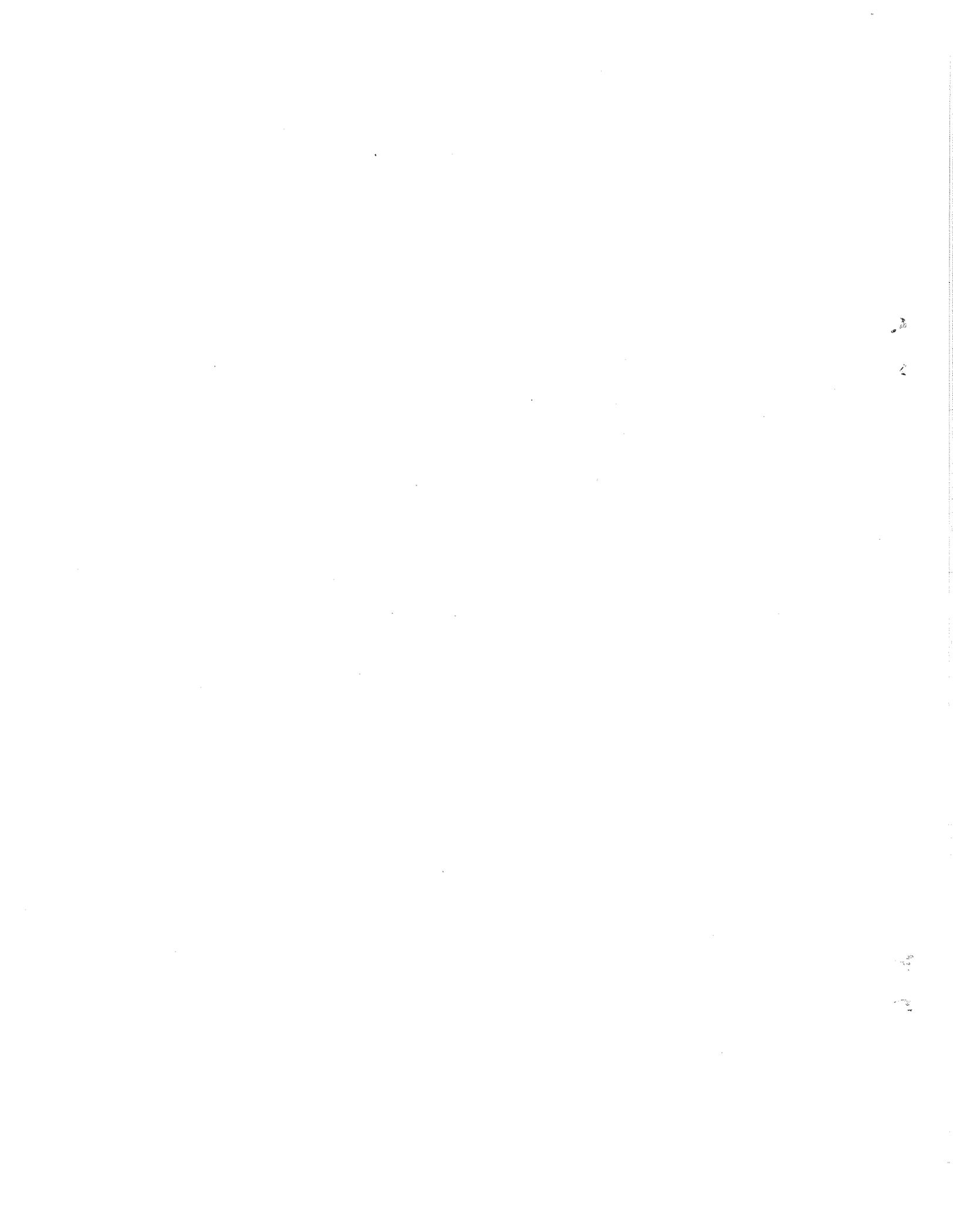
**MINNESOTA CAMPAIGN FINANCE and PUBLIC DISCLOSURE BOARD**

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## **ABOUT ADVISORY OPINIONS**

- The Campaign Finance & 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 about these laws to guide their actions in compliance with Minnesota Statute Chapter 10A and Minnesota Statute Chapters 383B.041 - 383B.058.
- 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. 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, 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>
349	Lobbyist	Communications for the purpose of obtaining a contract with the State of Minnesota	7
350	Lobbyist	Lobbying on a contingency fee basis	9
351	Campaign Finance	Reporting the use of a personal airplane for campaign purposes	11
352	Public Subsidy	Use of party account check-off funds by the state committee of a political party	13
353	Campaign Finance	Affiliation - Withdrawn	15
354	Campaign Finance	Non-campaign disbursements cost of providing food	17
355	Conflict of Interest	Potential conflict of interest for Legislature	19
356	Campaign Finance	Fundraising and expenditures by a Political Party Unit	21
357	Campaign Finance	Compensation for staff services, in-kind donation to pay for living expenses of staff	25
358	Lobbyist	Determination and reporting of lobbying disbursements	29



**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 27, 2003

**RE: Communications for the purpose of obtaining a contract with the State of Minnesota.**

**ADVISORY OPINION 349**

**SUMMARY**

An individual who communicates with state employees, public officials, and elected officials, to sell goods or services is not required to register as a lobbyist.

**FACTS**

As a member of a firm that may communicate with state employees and elected officials you ask the Campaign Finance and Public Disclosure Board (the Board), for an advisory opinion based on the following facts:

1. Your firm has been asked to assist a business in seeking a contract with the state of Minnesota. Your services to the business will be compensated contingent on the securing of the state contract.
2. Your firm's services will consist of assisting the business in working with state employees, commissioners, and the Governor's office to obtain a contract.
3. Your firm will not attempt to change Minnesota statutes or administrative rules in order to procure the contract.

**ISSUE ONE**

Do the described services constitute lobbying under Minnesota Statutes or Administrative Rules?

**OPINION**

No. The purpose of the proposed communication with state employees and elected officials is to secure a state contract. The effort to secure the contract will not require legislative action or the amendment, adoption, or repeal of an administrative rule. Minn. Stat. §10A.01, subd. 21, (1), provides in part that a lobbyist means an individual "...attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials;" For the purposes of Chapter 10A "administrative action" is defined in Minn. Stat. §10A.01, subd. 2, as an action to amend, adopt, or repeal an administrative rule under the provisions of Minnesota Statutes Chapter 14. Additionally, Minn. Stat. §10A.01, subd. 21, (6), provides that lobbying does not

include activities of “an individual while engaged in selling goods or services to be paid for by public funds;”

## **ISSUE TWO**

May your firm be compensated for the services described in the facts of this advisory opinion on a contingency basis?

## **OPINION**

Yes. As provided in the answer to issue one the services that may be provided by your firm do not constitute lobbying under the provisions of Chapter 10A. Therefore, the prohibition on compensating lobbying services on a contingency basis found in Minn. Stat. §10A.06 does not apply.

**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 27, 2003

**RE: Lobbying on a contingency fee basis.**

**ADVISORY OPINION 350**

**SUMMARY**

Lobbyists may not provide services on a contingency fee basis to a client for which they are registered to lobby.

**FACTS**

As a member of a law firm that represents registered lobbyists you ask the Campaign Finance and Public Disclosure Board (the Board), for an advisory opinion based on the following facts:

1. Potential clients who want assistance in selling goods or services to the state occasionally approach lobbyists for assistance in securing state government contracts.
2. The lobbyists are asked to assist the clients in securing the contracts on a contingency fee basis.
3. The securing of the contract may in some cases necessitate the change, adoption, or repeal of an administrative rule or state statute.

**ISSUE ONE**

Does Minnesota Statutes Chapter 10A prohibit a lobbyist from accepting compensation dependent in the clients being awarded a state procurement contract to sell goods and services to the state?

**OPINION**

If the effort to secure the contract will not require legislative action or the amendment, adoption, or repeal of an administrative rule, the services provided to the client do not meet the definition of lobbying provided in Minn. Stat. §10A.01, subd. 21. If an individual is not lobbying, the compensation they receive for their services is not limited by the prohibition on contingent fees contained in Minn. Stat. §10A.06.

## **ISSUE TWO**

In the event that a lobbyist, as part of its representation of the client in the contract procurement process must work to change a law or administrative rule, may the lobbyist lawfully be paid a contingent fee for work dedicated to the procurement process and charge a non-contingent fee for legislative work?

### **OPINION**

No. The selling of goods or services and the effort to influence a legislative or administrative action that allows the awarding of the contract to purchase the goods or services, are mutually dependent on each other for success. A lobbyist cannot build a wall of separation that allows them to think and act on one aspect of securing a state contract without considering the impact the actions will have on their lobbying efforts to influence legislative or administrative action that will make the contract possible.

## **ISSUE THREE**

May a lobbyist collect a contingent fee from a client that is successful in the procurement process and charge a non-contingent fee to the same client for unrelated legislative or administrative work?

### **OPINION**

No. Individuals register with the Board as a lobbyist for a given client because they are providing the service of attempting to influence legislative or administrative action. Compensation from a client to a lobbyist is regulated by Minn. Stat. 10A.06, which prohibits contingent fees. An individual may be compensated in accordance with Minn. Stat. 10A.06 for providing lobbying services to one client, and also provide assistance other than lobbying to a separate client under a different compensation arrangement.

**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 19, 2003

**RE: Reporting the use of a personal airplane for campaign purposes.**

**ADVISORY OPINION 351**

**SUMMARY**

The use of a personal airplane for campaign purposes is either an in kind contribution and in kind expenditure to benefit the campaign or a campaign expenditure that must be paid for with committee funds.

**FACTS**

As a member of a campaign committee you ask the Campaign Finance and Public Disclosure Board (the Board), for an advisory opinion based on the following facts:

1. A candidate for state legislative office owns an aircraft.
2. The aircraft will be used to transport the candidate to campaign activities in the district.

**ISSUE ONE**

How does the principal campaign committee of the candidate calculate the cost of using the aircraft for campaign purposes?

**OPINION**

Determining the "fair market value" of items or services contributed to a campaign, or setting a rate at which the use of an item or service is reimbursed by the campaign, requires both knowledge of the specific item or service and the local conditions that may affect their value. Committees that accept in kind donations are obligated to determine their fair market value. The valuation should be determined at the time the in kind contribution is accepted or before the committee agrees to reimburse the candidate for expenditures that he or she may make. By pre determining the value of an item or service the committee is able to avoid accepting contributions or making expenditures above the applicable limits.

A committee should be prepared to defend the fair market valuation it assigns to items and services if they are scrutinized by either the Board or an election opponent. The use of an airplane is a difficult item to value because variable factors such as maintenance costs and

operating life of the equipment have to be included with more evident items, such as the cost of fuel, in order to determine fair market value. The Board lacks the expertise and information needed to provide a fair market value of the use of the airplane by the committee. A possible approach is to use the airplane manufacturer's estimated cost of operation per mile. If that information is not available the committee may wish to contact local aviation companies to find the per mile cost to lease either the same airplane or a comparable model.

## **ISSUE TWO**

How does the principal campaign committee report the cost of using the aircraft for campaign purposes to the Board?

## **OPINION**

If the candidate is donating the use of the airplane to the committee the cost of the campaign related travel is an in kind contribution to the principal campaign committee that applies to the candidate's overall contribution limit. If the value of the travel is in aggregate over \$100, the in kind contribution(s) must be itemized on periodic Reports of Receipts and Expenditures. Itemization of an in kind contribution must include the date of the contribution, and a description of the item donated to the campaign. If the use of the plane occurs over several dates each flight must be listed separately under the name of the candidate as the contributor. In kind contributions are considered consumed in the same reporting period in which they are received by Minn. Stat. §10A.20, subd. 3, (b). Therefore, the use of the airplane is also a campaign expenditure that counts against the candidate's campaign expenditure limit. The in kind expenditures are itemized for the same amount and purpose as provided in the schedule of receipts.

If the principal campaign committee is reimbursing the candidate for the use of the airplane then the value of the travel is listed on the schedule of campaign expenditures as a third-party reimbursement (Minn. Stat. §10A.20, subd. 13). If the value of the travel meets the \$100 threshold for itemization, the expenditure must list the candidate as the payee, along with a description of the date(s) and purpose of each expense for which the candidate is being reimbursed.

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

**Issued:** November 19, 2003

Issued to: Daniel Justensen  
3536 46<sup>th</sup> Ave. South  
Minneapolis, MN 55406

**RE: Use of party account check off funds by the state committee of a political party.**

**ADVISORY OPINION 352**

**SUMMARY**

The state committee of a political party may use funds from the party check off account to promote precinct caucuses provided the promotion is a multicandidate political party expenditure.

**FACTS**

As the treasurer of the state committee of the Independence Party of Minnesota you ask the Campaign Finance and Public Disclosure Board (the Board), for an advisory opinion based on the following facts:

1. Minnesota taxpayers may direct \$5 from the general fund of the state to a qualified political party election account by indicating a party choice on either their state income tax form or renter and homeowner property tax refund return.
2. The state committee of a qualified political party receives 10 percent of the payments directed to the party fund by Minnesota taxpayers.
3. Minnesota conducts "precinct caucuses" in the manner and for the purposes provided in Minnesota Statutes Chapter 202A every state general election year.
4. The state committee of the Independence Party of Minnesota wishes to promote attendance at the party caucuses in March.

**ISSUE**

May the state committee of the Independence Party of Minnesota use its share of the party account to promote the party's precinct caucuses?

**OPINION**

Yes, provided that the specific promotions of the precinct caucuses qualify as a multicandidate political party expenditures. The designation, allocation, and use of funds from the tax check off

accounts by the state committee of a qualified political party is provided for in Minn. Stat. §10A.31, subd. 5, (b). This statute directs that the money allocated to the state committee of a political party must be kept in a separate account and may only be spent on multicandidate political party expenditures as defined in Minn. Stat. §10A.275.

The precinct caucuses are a means for the political parties to get people involved at a grass roots level with the endorsement of candidates and the drafting of party platforms. It is a reasonable conclusion that people who turn out for a precinct caucus will be likely supporters of that party's candidates at the state primary and general elections. Precinct caucuses are one of the first steps in generating public support for a party's candidates. The Board believes that published, posted, or broadcast advertisements for the precinct caucuses that do not mention specific candidates meet the definition contained in Minn. Stat. §10A.275 subd. 1, (1), as a type of multicandidate political party expenditure that may be paid for with party check off funds.

The Board notes that the check off funds may also be used for those expenditures specified in Minn. Stat. §10A.275 subd. 1, (2),(3),(4) and (5).

**ADVISORY OPINION REQUEST #353**

**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 NON-PUBLIC DATA  
under Minn. Stat. § 10A.02, subd. 12(b)**

**Issued:** February 25, 2004

**RE: Noncampaign Disbursements Cost of Providing Food**

**ADVISORY OPINION 354**

**SUMMARY**

A principal campaign committee may not classify the cost of providing food for staff of an elected official as a noncampaign disbursement.

**FACTS**

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

1. You are an elected official of the state.
2. Your staff attended an annual training session that was several days in length.
3. This year staff participating in the training got together for an optional after hours "social get together". At the event you had a program and discussed issues important to the office.
4. You used funds from your principal campaign committee to purchase food for the after training event. Because attendance at the event was optional you did not feel that paying for the food from office budget funds was appropriate.
5. You believed the event was important for staff morale given recent budget cuts and changes in office functions. You feel organizing and supporting the event was a part of your leadership responsibilities to your staff.

**ISSUE ONE**

Does the expenditure for food described in the facts of this advisory opinion qualify as a noncampaign disbursement?

## OPINION

No. The funds available to a principal campaign committee are either donated to it for the purpose of electing a candidate or acquired from a public subsidy payment. Using committee funds for a purpose other than the nomination or election of a candidate must clearly meet one of the noncampaign disbursements defined in Minn. Stat. §10A.01, subd. 26, or provided for in Minnesota Rules 4503.0900. Neither statute nor administrative rule provide for the type of expenditure described in this request.

You suggest that providing the food for the after-work event was a part of providing leadership for your office. However, Minn. Stat. §10A.01, subd. 26 (8), which provides for payment of expenses incurred by the leadership of a legislative caucus, is not a viable categorization of the situation described in the request. While the leadership duties of your office may incur justifiable costs, the statutory language for this type of noncampaign disbursement is limited to legislative caucus leadership, and cannot be expanded by the Board to include other office holders.

Additionally you contend that the cost of providing the food was a cost of serving in office. Minn. Stat. §10A.01, subd. 26 (9), provides that the payment of costs incurred by elected candidates for serving in public office, if not for personal use of the candidate, may be classified as a noncampaign expenditure. In prior advisory opinions on noncampaign disbursements related to the cost of serving in office (see Advisory Opinions 314 and 346 issue 6) the Board has been unwilling to classify as noncampaign disbursements items that are not reasonably expected or required of a public official. The Board sees no reason to deviate from that standard in this opinion. It does not appear to be reasonably required or even expected that an elected official provide dinner for staff attending an after hours event.

If a cost incurred by a principal campaign committee cannot be classified as a noncampaign disbursement it must then be for one of the purposes provided in Minn. Stat. §211B.12. While this statute is outside of the Board's jurisdiction to interpret, the advisory request makes it clear that the purpose of the food was unrelated to the conduct of an election campaign. It is the Board's opinion that your committee should be reimbursed for the cost of the food.

**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 25, 2004

**RE: Potential Conflict of Interest for Legislature**

**ADVISORY OPINION 355**

**SUMMARY**

A specific vote, action, or decision that may benefit relatives of a legislator does not create a conflict of interest under Minn. Stat. §10A.07. A conflict of interest is limited to the vote or action having a substantial affect on the financial interests of the legislator or the associated business of a legislator.

**FACTS**

As a legislator, and therefore a public official as defined in Minnesota Statutes, Chapter 10A, you ask the Campaign Finance and Public Disclosure Board (the Board) for an advisory opinion based on the following facts:

1. You have relatives who receive a pension from a public entity pension fund (the Fund).
2. It may be necessary for the state legislature to take action in order for the Fund to remain solvent
3. You may author legislation or vote on bills that affect the Fund.

**ISSUE**

May a public official vote or take actions or decisions that benefit the financial interests of a relative without creating a conflict of interest under Minn. Stat. §10A.07?

**OPINION**

Yes. Under Minn. Stat. §10A.07 a potential conflict of interest arises only when a public official's votes, actions, or decisions would affect the financial interests of the official or an associated business of the official in a manner that is greater than the effect on other members of the same occupation or profession.



**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: April 28, 2004

**RE: Fundraising and Expenditures by a Political Party Unit**

**ADVISORY OPINION 356**

**SUMMARY**

A political party unit may raise and spend funds for women candidates as a group providing the fundraising does not refer to a specific candidate and the contributions and expenditures are properly reported to the Board.

**FACTS**

As a representative of a political party unit 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 party unit would like to establish a fundraising effort to support the recruiting, training, and election of women to the Minnesota House of Representatives.
2. Proceeds from the fund raising effort would be deposited in the political party bank account and tracked on a separate internal ledger.
3. Fundraising efforts would not be used to benefit one or two specific candidates, but rather to support women of the political party who may become candidates for a seat in the State House.

**ISSUE ONE**

Is the fundraising effort described in the facts of this request a form of earmarking?

**OPINION**

No. Under Minn. Stat. §10A.16 a political party unit may not solicit or accept a contribution under the express or implied condition the contribution, or any part or the contribution be directed to a particular candidate. As described in the facts of this request the fundraising will be directed to support multiple candidates of a given gender, not a specific candidate.

The Board notes that a fundraising effort for a specific gender of candidate could be earmarking if only one candidate could benefit from the funds raised, even if no specific candidate is named. For example, fundraising to elect a woman governor of a given political party that did not name a specific candidate would still be earmarking if there were only one woman of that political party running for governor.

## **ISSUE TWO**

Are expenditures for the recruiting, training, and election of women candidates for the State House of Representatives a type of multi-candidate expenditure?

### **OPINION**

The requestor will need to compare the purpose of a given expenditure to the types of expenditures provided in Minn. Stat. §10A.275 to determine if the expenditure is a multicandidate political party expenditure. Minn. Stat. §10A.275 provides for five types of expenditures that qualify as a multicandidate political party expenditure. None of the five multicandidate political party expenditures depend on gender or any other demographic variable as a qualifier. For example, Minn. Stat. §10A.275, subd. 1 (4), provides that “expenditures for a political party fund-raising effort on behalf of three or more candidates” is a type of multicandidate political party expenditure. Therefore, if the fund-raising effort benefits three or more candidates it is a multicandidate political party expenditure regardless of the gender of the candidates.

## **ISSUE THREE**

Does the political party unit need to establish a separate bank account for the money raised from the fundraising effort for women candidates described in this request?

### **OPINION**

No. The funds raised through the fundraising effort for women candidates remain contributions to the political party unit that may be deposited with any other contributions the caucus receives. Similarly money spent by the political party unit on behalf of women candidates are either a multicandidate political party expenditure, a contribution to a particular woman candidate, or an independent expenditure on behalf of a particular woman candidate that may be made from the general bank account of the political party unit.

## **ISSUE FOUR**

How are funds raised and expended for women candidates reported to the Board?

### **OPINION**

Funds raised by the fundraising effort for women described in this request would be reported on the Report of Receipts and Expenditures as contributions to the political party unit. No special identification of receipts received in response to the fundraising effort for women is required when reporting to the Board.

Expenditures for women candidates that qualify as multicandidate political party expenditures are reported on the Report of Receipts and Expenditures using schedule B1, Expenditures. Multicandidate political party expenditures of more than \$100 must specify the purpose of the

expenditure and the name and address of the vendor who provided the service. Expenditures for women candidates that do not qualify as a multicandidate political party expenditure are reported as either a contribution to a specific candidate or as an independent expenditure made on behalf of a specific candidate.



**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 26, 2004

**RE: Compensation for Staff Services, In-Kind Donation to Pay for Living Expenses of Staff**

**ADVISORY OPINION 357**

**SUMMARY**

Political party units and candidates may jointly hire and compensate staff to work on campaigns and develop assets. The staff's time must be closely tracked and projects between the party units and candidates segregated in order to prevent unauthorized in-kind donations. An association that provides compensation to campaign staff is making an in-kind donation to the principal campaign committee that benefits from the staff's work.

**FACTS**

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

1. Five students from a college (Students) are offering their services as paid staff to two political party senate districts (Senate Districts) and four candidates for the State House of Representatives (Candidates)
2. In addition to the compensated services each of the Students will be completing an unpaid academic internship with your principal campaign committee (Committee). The Committee is also one of the four House of Representative Candidates that will employ the Students as paid staff. When working for the Committee as unpaid interns the Students will work on specific projects that will be separate from the activities they work on as paid staff. The time spent assisting the Committee as an unpaid political intern is the core requirement that will earn the Students academic credit at their college.
3. The Students propose to work a collective total of 1,800 paid hours for the Senate Districts and Candidates. Services to be provided include planning and executing fundraisers, web site development, developing and updating databases, and other similar tasks to benefit the election campaigns of the Candidates, and the structural long-term assets of the Senate Districts. The rate of compensation will be \$10 per student per hour.
4. To compensate for the services provided by the Students each Senate District will pay \$6,000, and each Candidate will pay \$1,500. The combined \$18,000 will be deposited with the state political party (State Party). The State Party will hire the Students, and then pay the Students wages from the \$18,000 provided by the Candidates and Senate

Districts. The State Party will provide administrative support by covering the Students with the State Party's workers compensation policy and deduct taxes, workers compensation and any other required amounts from the wages of the Students. The State Party will not pay the Students other than with the funds provided by the Senate Districts and Candidates.

5. The hours of compensated work provided by the Students will be proportional to the amount paid by each Candidate and Senate District. Each Candidate will receive 150 hours of the Students time; each Senate District will receive 600 hours of the Students time. Time provided by the students will be tracked with a predetermined schedule to ensure that each Senate District and Candidate receives the correct number of hours worked. Each Student will work no more than 20 hours per week total for the Candidates and Senate Districts.
6. The College the Students attend has offered to provide the Students with a \$6,000 academic internship grant. The grant is paid to the students. After deductions for FICA, Medicare, and other payroll taxes are removed the Students will receive approximately \$4,500. To receive the compensation from the grant, the Students must serve as political interns to the Committee for at least 35 hours per week per student. In total the Students will work a collective 3,500 hours as political interns. The Committee will not compensate the Students for their work as political interns. To receive academic credit for the internship the students must document their activities. The College will not direct the Students to intern for a particular campaign or political party, and interning for a specific campaign or political party is not a condition of the grant.

### **ISSUE ONE**

Do the Candidates and Senate Districts report to the Board the transfer of funds to the State Party for payment of the Students wages as an expenditure?

### **OPINION**

Yes. The funds from the Candidate and Senate Districts are payments to the State Party for staff services. As described in the facts of this advisory opinion request the Students are employees of the State Party. The role played by the State Party is similar to that of a vendor who provides temporary employees; the payment goes to the State Party even though the Students will be doing the work. The funds paid by the Candidates and Senate Districts do not represent a contribution to the State Party.

A Candidate must report the payment to the State Party as a campaign expenditure. A Senate District will report the payment to the State Party as an expenditure. Both Senate Districts and Candidates will need to detail the purpose of the payment in sufficient detail to make clear what is being purchased from the State Party.

The State Party is providing the cost of administrative overhead when it places the Students on a worker's compensation insurance policy, calculates and withholds taxes and other deductions,

and issues wages. This administrative support has a value to the Candidates and Senate Districts. As defined by the facts of this advisory opinion the administrative support will be an expenditure by the State Party for staff services that will benefit four candidates. Expenditures for staff services that benefit three or more candidates are a multicandidate political party expenditure as provided in Minn. Stat. §10A.275, subd. 1, (5). Therefore, the administrative overhead cost is not considered a contribution to or an expenditure on behalf of any candidate.

The provision for multicandidate political party expenditures does not extend to political party units. As provided in Minn. Stat. §10A.01, subd. 13, a donation in kind is "anything of value". The State Party will need to determine a value for the administrative overhead. If the value of the administrative overhead is in excess of \$20 the State Party must report the cost as an in-kind donation to the Senate Districts. A donation in kind is also an in kind expenditure during the same reporting period in which the contribution is made (Minn. Stat. §10A.20, subd. 3, (b)). If the value of the administrative overhead reaches the threshold at which it must be disclosed, each Senate District will report the administrative overhead as a donation from the State Party and as an in kind expenditure by the Senate District.

## ISSUE TWO

The Students are offering to develop databases, web sites, fundraisers, and other assets for the Senate Districts. If the assets developed for the Senate Districts are used to support the Candidates will the use of the assets represent a donation in kind to the Candidates?

## OPINION

Yes. As described in the facts of this opinion the wages paid to the Students by the Senate Districts are expenditures to develop assets that will belong to the Senate District. The Student's time paid for by the Candidates is for activities to benefit the Candidates. The Students will need to closely adhere to work schedules so that the Candidates and Senate Districts receive the full benefit of the work for which they provide compensation. The Senate Districts and Candidates will need to clearly define the ownership of the projects the Students will work on so that the benefit of a given item of work goes to the Senate District or Candidate that paid for that portion of the Students time used to complete the project. This will be of particular importance when the Students are switching back and forth from their duties as interns to their duties as paid staff for the Committee.

If a Senate District later uses assets developed for it by the Students to support one or more Candidates, then the fair market value of the use of the asset is an in-kind donation to the Candidate. A donation in kind from a Senate District to a Candidate applies to the Candidate's political party contribution limit, and is an in-kind campaign expenditure. A donation in kind is an expenditure on behalf of the candidate and if the value of the in-kind donation is over \$20; the Senate District must obtain prior written authorization from the Candidate before making the expenditure (Minn. Stat. §10.17, subd. 2).

### ISSUE THREE

Will the compensation that the Students receive from the College for serving as political interns constitute a contribution from the College to the Committee?

### OPINION

Yes. The Board understands that the College did not choose the candidate to whom the Students are offering their assistance. Nonetheless, the compensation is provided by the College with the condition that the Students each serve as an intern 35 hours a week for the Committee. By paying compensation to the Students, the College in effect gives the Student's time to work for the Committee that could otherwise be used to earn wages.

The compensation paid to the Students by the College becomes a \$6,000 in-kind donation from the College to the Committee. The contribution limit for candidates for state representative in an election year is set at \$500 by Minn. Stat. §10A.27, subd. 1, (5).

In addition, an in-kind donation of staff services is also an in-kind campaign expenditure during the same reporting period in which the donation is received (Minn. Stat. §10A.20, subd. 3 (b)). The value of the grant will count against the campaign expenditure limit of the Committee.

Associations that are not registered under the provisions of Chapter 10A which contribute more than \$100 to a candidate, political party unit, or political committee during a calendar year must provide with the contribution a written statement that provides the same disclosure that would be reported to the Board if the association was registered (Minn. Stat. §10A.27, subd. 13). The itemization of the written disclosure includes the receipts and expenditures of the association during the reporting period in which the contribution is made. The College may wish to consult with their legal advisor to determine if corporate contributions received by the College during the period of disclosure would violate the provisions of Minn. Stat. §211B.15.

**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: June 15, 2004

**RE: Determination and Reporting of Lobbying Disbursements**

**ADVISORY OPINION 358**

**SUMMARY**

Lobbyists and lobbyist principals must reasonably allocate and report expenditures for items and services that have both a lobbying and a nonlobbying purpose.

**FACTS**

As a member of a professional association (the Firm), which employs lobbyists registered with the Campaign Finance and Public Disclosure Board (the Board), you ask for an advisory opinion based on the following facts:

1. The Firm represents a non-profit advocacy association (the Association). The Association is involved with the legislative process. Some members of the Firm are registered lobbyists for the Association. The Association is a lobbyist principal as defined in Minn. Stat. §10A.01, subd. 33.
2. As required by Minn. Stat. §10A.04, subd. 4, the members of the Firm who are registered lobbyists for the Association submit periodic reports of Lobbyist Disbursements. Additionally, the Firm provides information on lobbying expenditures to the Association's treasurer so that the Association may file an accurate Annual Report of Lobbyist Principal, as required by Minn. Stat. §10A.04, subd. 6. In collecting information to include in these reports the Firm has included all expenses related to lobbying, and all salaries and administrative expenses attributable to lobbying. Neither the lobbyist nor the Association has reported expenditures that they deem unrelated to lobbying.
3. The Association also has activities that are not for the purpose of influencing the legislative process, but which are educational and informational in nature.
4. As part of the "Agreement for Legislative Services" that the Firm has with the Association the Firm provides services that include "administrative, research, analysis, bill and amendment drafting, monitoring, and advocacy."
5. The Firm maintains a web site for the Association. The web site is updated with information for the use of the Association's members, and the general public. You do not consider the cost of the web site a lobbying disbursement because the purpose of the web site is to provide information, and not to influence legislative action.

6. The Firm also maintains a property tax computer model for the Association. The computer model is used for both educational and lobbying activities. Maintenance provided by the Firm includes writing computer code and updating the information base used by the computer model. The Firm and the Association have not reported the maintenance costs associated with the computer model as a lobbying disbursement. The direct cost of using the computer model to simulate a proposed legislative action and the cost of using the results generated by the model in attempting to influence legislative action has been reported as a lobbying disbursement by the lobbyists and the Association.
7. You believe that there are similarities between the web site services and computer model maintenance provided by the Firm and the facts of the findings issued by the Board in response to a complaint filed against Himle Horner and the Northstar Corridor Development Authority.

### **ISSUE ONE**

Should the Association and the designated lobbyist report the cost of administering a web site used only for informational purposes unrelated to influencing the actions of public or local officials as a lobbying disbursement?

### **OPINION**

No. Advisory opinions are based on the facts presented in the request; the Board has no reason to question the requestors statement that the web site is for informational purposes only and is not intended to support the lobbying efforts of the Association. The lobbying services that the Firm provides to the Association do not affect the nature of other services unrelated to lobbying provided to the Association.

A web site has the potential to be a lobbying expenditure if a purpose of the content on the site is to motivate people to contact public officials or local officials in order to influence an official action. Because the content of a web site is transitory in nature the Association and the Firm will need to monitor all postings to insure that the site remains outside of the scope of lobbying activity.

### **BOARD NOTE**

The analogy that the requestor believes exists between the facts of this advisory opinion and the facts of the findings issued in response to a complaint filed against Himle Horner and the Northstar Corridor Development Authority does not exist. There was agreement by all parties to that complaint that the web site in question was, in part, a lobbying effort. The cost of the web site related to lobbying was properly reported as a lobbying disbursement. The issue in the findings was whether a vendor who provides web site administrative services is required to register as a lobbyist. The Board's position is that a vendor may provide a service that is a lobbying disbursement without meeting the definition of lobbyist found in Minn. Stat. §10A.01, subd. 21.

## **ISSUE TWO**

Should the Association and the designated lobbyist report the cost of maintaining the computer model as a lobbying disbursement?

### **OPINION**

Yes. The cost of maintenance reported as a lobbying disbursement should be in proportion to the use of the computer model for lobbying purposes. As described in the facts of this opinion, the computer model is, in part, a lobbying tool. As provided in Minnesota Rules 4511.0600, subp. 4, "A disbursement that is partially in support of lobbying and partially for a nonlobbying purpose must be allocated on a reasonable basis between the two purposes and the portion which is for lobbying activities must be reported." The computer model cannot generate information for a lobbying effort if it is not accurate and current; the cost of this maintenance is partially a lobbying disbursement. Because the computer model is also used for purposes other than lobbying the Association and the Firm will need to develop a method to track the percentage of time the computer model is used for various purposes. The percentage of time the computer model is used to support lobbying efforts is the percentage that may be reasonably used to allocate a share of the maintenance costs as a lobbying disbursement.

The Association must include the yearly cost of maintaining the computer model proportionate to its use as a lobbying tool with other lobbying disbursements disclosed on its Annual Report of Lobbyist Principal. The designated lobbyist for the Association must include the proportionate maintenance costs in their periodic Lobbyist Disbursement Reports.

## **ISSUE THREE**

May the Association and designated lobbyist amend their 2003 reports to include the maintenance costs of the computer model allocated to lobbying?

### **OPINION**

Yes. Corrections to reports previously filed with the Board must be made in writing within ten days of the date of the event prompting the change, or ten days of the person responsible for the report becoming aware of an inaccuracy (Minn. Stat. §10A.025, subd. 4). In this case the Association will need to amend the appropriate Annual Report(s) and the lobbyist designated to report the costs of the Association on their periodic Lobbyist Disbursement Report will need to amend the appropriate reports to reflect the maintenance costs for each reporting period.

## **ISSUE FOUR**

Will the Association and the designated Lobbyist meet the applicable reporting requirements of Chapter 10A by reporting the total amount the Firm is paid by the Association (including payment for services unrelated to lobbying) as a lobbying disbursement?

## OPINION

No. As provided in the facts of this opinion the cost of the web site and some portion of the cost of maintaining the computer model are not related to lobbying activities. The purpose of the lobbyist reporting required in Chapter 10A is to provide the public with accurate information on the resources being expended to affect legislative, administrative, and metropolitan governmental unit actions. Deliberately over reporting the cost of lobbying efforts obscures from the public the true cost of lobbying both for the specific Association and for the Association in relation to other lobbying efforts in Minnesota.

The Board understands that some lobbying expenditures must be allocated between multiple entities, multiple purposes, and in some cases may only be approximated. In recognition of this the Board adopted Minnesota Rules 4511.0600, which provides guidance on reporting lobbying expenditures and authorizes lobbyists and lobbyist principals to make allocations and approximations in filing lobbying reports under Chapter 10A. While this rule recognizes that reported lobbying disbursements may not be exact it does not excuse lobbyist and lobbyist principals from making reasonable efforts to track and calculate lobbying expenditures, even when such efforts are not administratively expedient.

