

05 - 0498

ADVISORY OPINIONS

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

**July 1, 2004– June 30, 2005
Numbers 359 – 368**

August 22, 2005

**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.

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**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: July 22, 2004

**RE: Registration and Reporting Requirements for Political Committees and
Political Funds**

ADVISORY OPINION 359

SUMMARY

An association that endorses candidates is conducting an activity to influence the nomination or election of one or more candidates. The association must register as a political committee or political fund if it raises or spends more than \$100 on the endorsement process.

FACTS

As a member of an association (the Association), that is considering activities that may come under the provisions of 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. The Association formed an endorsement committee in 2004. As of the date of this request the endorsement committee has not met, conducted activities, nor received funding.
2. The Association anticipates endorsing candidates for the state level office in 2004.
3. The endorsement process will consist of sending a letter to candidates in a contested election. The letter will invite the candidate to apply for the Association's endorsement. The letter will state the criteria the Association will use to endorse candidates.
4. The endorsement committee will be empowered by the Association to review requests for endorsement and issue endorsements to selected candidates.
5. The Association will not contribute money or time to candidates it endorses. The Association will not spend funds to publicize the endorsement. It will be left to each endorsed candidate to publicize the endorsement.
6. Some members may be willing to contribute to the Association small amounts of money, postage, supplies, or time to cover the costs of the endorsement process.
7. The anticipated costs of postage for the mailings will be less than \$100.

ISSUE ONE

If the anticipated endorsement activities of the Association occur, will the Association need to register with the Board?

OPINION

The Board believes that there is no reason for any association to endorse candidates other than to influence their nomination or election. Associations that seek to influence the nomination or election of state constitutional officers, legislators, or judicial candidates are either a political committee or political fund as defined in Minn. Stat. §10A.01, subs. 27 and 28.

Registration and reporting under the provisions of Chapter 10A is required when the political committee or political fund has received contributions, made a contribution, or made expenditures in excess of \$100. The facts of this request provide that the postage for the endorsement process is anticipated to be less than \$100; however the cost of the endorsement process will also include the cost of paper, envelopes, and any other supplies used in the mailings. If the endorsement committee member's time needed to process the endorsement mailing and responses is volunteered without compensation it is not a "contribution" or an "expenditure" for the purposes of Chapter 10A (Minn. Stat. §10A.01, subd. 9 and 11). If the time of the endorsement committee members, or any support staff, is compensated, then the fair market value of that time is applied to the \$100 contribution or expenditure threshold.

ISSUE TWO

May members donate to the Association small amounts of money, postage, supplies or time to cover the costs of the endorsement process?

OPINION

Yes. If Association members provide items other than money to support the endorsement process the items are a "donation in kind" that must be counted at the fair market value of the item towards the \$100 registration threshold (Minn. Stat. §10A.01, subd. 13).

ISSUE THREE

What are the registration and reporting requirements if the Association collects or spends more than \$100 on the endorsement process?

OPINION

Minn. Stat. §10A.14, subd. 1, provides that the Association must register with the Board as a political committee or political fund no later than 14 days after the Association has received contributions, made a contribution, or made expenditures in excess of \$100 to influence elections. During a state general election year political committees and funds must submit a Report of Receipts and Expenditures 15 days before the primary election, 10 days prior to the general election, and a year end report (Minn. Stat. §10A.20, subd. 2). The reporting requirements of Chapter 10A apply to political committees and political

funds until the political committee or political fund terminates its registration with the Board as provided in Minn. Stat. §10A.24.

BOARD NOTE

The facts of this advisory opinion request do not indicate the funding mechanisms of the Association. If the Association funds any costs of the endorsement process directly, the requester should be aware of the provisions of Minn. Stat. §211B.15, which prohibit corporations from directly or indirectly contributing to organizations to influence the nomination or election of a candidate. Any item or money provided by the Association for the endorsement process would be subject to this prohibition.

**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: July 22, 2004

RE: Use of Party Unit Web Site to Collect Contributions for Specific Candidates.

ADVISORY OPINION 360

SUMMARY

Political party units may provide donors with a Political Contribution Refund receipt for the aggregate amount of contributions received. Political party units may have more than one depository for receiving funds. Political party units may provide candidates with a web page and administrative overhead needed for a candidate to receive Internet contributions directly into the candidate's principal campaign committee's account.

FACTS

As the Chair of a major political party unit (the 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 Party Unit maintains a website for providing political news and information.
2. The website provides a mechanism for individuals to contribute to the Party Unit via the Internet.
3. The Party Unit issues Political Contribution Receipts (PCR receipts) for contributions received from the website.
4. The Party Unit wishes to provide donors with the option of donating a certain amount to the Party Unit on a weekly or monthly basis from the website.
5. Donations to the Party Unit made from the website are deposited in a PayPal/credit card account established by the Party Unit. From the PayPal/credit card account the contributions are periodically transferred to the Party Unit's bank account.
6. The Party Unit is considering offering candidates the opportunity to receive web-based contributions from the Party Unit's web site. The candidate would be responsible for the cost of transaction, service, and handling fees related to the contributions. The contributions would be collected in a holding account separate from that used for funds donated to the Party Unit. The contributions would be collected and distributed by the Party Unit to the candidates in a manner consistent with relevant portions of Advisory Opinion 319.

ISSUE ONE

If the Party Unit provides on the website a way for donors to contribute a certain amount to the Party Unit on a weekly or monthly basis may the Party Unit issue PCR receipts for the aggregate amount of the contributions?

OPINION

There is no provision in Chapter 10A that prevents the Party Unit from aggregating multiple contributions into a single PCR receipt. The Party Unit must ensure that the aggregate PCR receipt is issued and dated only after the amount that triggers the issuance of the aggregate PCR has actually been received and deposited. A PCR cannot be issued for funds that are anticipated or promised from a contributor.

ISSUE TWO

Is there a specific time frame in which contributions received over the Internet must be transferred from the Party Unit's PayPal/credit card account to the Party Unit's bank account?

OPINION

A political party unit is allowed to have one or two depositories in each county contained within the unit's boundary under the provisions of Minn. Stat. §10A.11, subd. 4. Depositories are defined in Minn. Stat. §10A.01, subd. 12 as "a bank, savings association, or credit union organized under federal law and transacting business within this state". If the PayPal/credit card account qualifies as a depository under this definition then the Party Unit may wish to amend its registration to include the PayPal/credit card account as one of its official depositories. Funds contained in a depository listed on the Party Unit's registration are considered under the control of the Party Unit and do not need to be transferred to any other account.

If the PayPal/credit card account used to receive on-line donations cannot be classified as a depository then Minnesota Rules 4503.0500, subp. 3, requires that the donation be deposited in the Party Unit's depository within 10 business days.

ISSUE THREE

May the Party Unit collect and forward on-line donations to candidates as described in the facts of this advisory opinion?

OPINION

No, as described in the facts of the advisory opinion the Party Unit would violate the prohibition on earmarking contributions contained in Minn. Stat. §10A.16. This statute prohibits political party units from soliciting or accepting a contribution with the express or implied condition that the contribution be directed to a particular candidate other than the initial recipient. While the plan proposed by the Party Unit separates the contributions to candidates from the contributions to the Party Unit into a discrete holding account the funds are still under the control of the Party Unit until forwarded to the candidates.

BOARD NOTE

The earmarking prohibition will not apply if each of the candidate's principal campaign committees has a separate PayPal/credit card account for receipt of on-line contributions. The Party Unit may provide a mechanism for the Internet based donation to occur if at no time it has control of the funds intended for the candidates. A candidate may authorize his or her principal campaign committee to approve the solicitation and collection of campaign contributions from credit cards under the provisions of Minnesota Rules 4503.0600, subpart 1.

Under the above scenario, the Party Unit must account for the cost of providing a web page and any associated administrative overhead to the candidates for the acceptance of web-based donations. The Party Unit may either bill the candidates for the service at a rate consistent with the fair market value of the website page or donate the value of the website page as an in-kind donation to the candidate. If the Party Unit provides the service to three or more candidates for constitutional, legislative, or judicial office the cost of the website page may be classified as a multicandidate political party expenditure as defined in Minn. Stat. §10A.275, subdivision 1 (4). Multicandidate political party expenditures do not count as a contribution to or expenditure on behalf of any candidate.

The Party Unit states that they are aware of the disclosure requirements for Internet based donations outlined by the Board in Advisory Opinion 319. Other associations that wish to use this advisory opinion as general guidance on Internet donations should also review Advisory Opinion 319.

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

Issued: July 22, 2004

Issued to: John A. Knapp
Winthrop & Weinstine, P.A.
Suite 3500, 225 South Sixth Street
Minneapolis, MN 55402

RE: Membership in a Group as an Exception to the Gift Prohibition.

ADVISORY OPINION 361

SUMMARY

A lobbyist principal may partially fund an event at which a gift is provided to officials if the officials are members of a group, the majority of the members of the group are not officials, and an equivalent gift is given to all members of the group.

FACTS

As an attorney representing a corporation (the Lobbyist Principal) that employs lobbyists registered with the Campaign Finance and Public Disclosure Board (the Board), you ask for an advisory opinion based on the following facts, which were included in your request letter or verbally conveyed to Board staff:

1. The Lobbyist Principal is planning to co-sponsor an event (the Event) during the national convention of a major political party.
2. The Event is a dinner and speaking program at which a Minnesota public official will be honored.
3. The Event will not be used as a fundraiser.
4. All members of the Minnesota delegation to the national convention will be invited to the Event.
5. The Minnesota public official to be honored at the Event is a member of the Minnesota delegation.
6. The Minnesota delegation includes several members that are "officials" as defined in Minn. Stat. 10A.071, subd. 1 (c), (public official, employee of the legislature, or a local official of a metropolitan governmental unit), but these officials make up less than one half of the members of the delegation.
7. The major political party that selected the members of the Minnesota delegation has a formal organization, rules for the management of party business,

and conducts a series of meetings at which members of the Minnesota delegation are selected.

ISSUE ONE

May the Lobbyist Principal provide a gift at the Event to officials under the exception for members of a group?

OPINION

Yes. The exception to the gift prohibition contained in Minn. Stat. §10A.071, subd. 3 (b)(1). states that a lobbyist principal may give a gift to an official if the gift is provided because of the official's membership in a group, and if the majority of the group's members are not officials, and if an equivalent gift is provided to all members of the group.

In Advisory Opinions 220 and 273 the Board found that to qualify for the "membership in a group" exception, the group could not be ad hoc or self-selecting in nature. Membership must be well defined and have a certain level of formality. Further the group must have some organization and definition to be legitimate for the purposes of Minn. Stat. §10A.071, subd. 3 (b)(1). Being a part of the Minnesota delegation to a major party national convention qualifies as "membership in a group" because of the process established by the political party to select delegates.

As provided in the facts of this advisory request, the other tests to the exception in Minn. Stat. §10A.071, subd. 3 (b)(1), are met because the majority of the Minnesota delegation are not officials and all members of the Minnesota delegation will be provided the gift.

The Board reminds the Lobbyist Principal that gifts provided to officials must be reported to the Board by the designated lobbyist on the applicable periodic Report of Lobbyist Disbursements. The disclosure is required by Minn. Stat. §10A.04, subd. 4 (c), and includes the amount and nature of each gift, with a value of \$5 or greater, given or paid to any official. The list must include the name and address of each official to whom the gift was given and the date on which it was received.

**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 15, 2004

**RE: Funds from a Principal Campaign Committee May Only be Used for Conduct
Related to a Political Campaign or for Specified Noncampaign
Disbursements.**

ADVISORY OPINION 362

SUMMARY

Principal campaign committee funds may only be used to pay for items and services that are related to a political campaign or that are for a specific noncampaign disbursement provided for in statute or administrative rule. Community events that a candidate participates in for purposes unrelated to the conduct of the campaign are not a "constituent service" and may not be paid for with principal campaign committee funds.

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, which were included in your request letter or verbally conveyed to Board staff:

1. In addition to being a candidate you are a performing musician and the leader of a band.
2. You have used your band as a mechanism to draw attention to your campaigns for state office. For example, the band has played in parades with a banner that identifies you as a candidate. On those occasions you have paid band members (but not yourself) with funds from your principal campaign committee and reported the cost as a campaign expenditure.
3. Your band is often asked to perform at community events. Examples of community events include civic ice cream socials, neighborhood celebrations, and as entertainment at city parks. Typically your band is not paid for playing at community events. However, you believe that your band members should be compensated for their time. You do not wish to be compensated for your time because you view the events as civic involvement.
4. During a noncampaign year and until adjournment of the legislature during a campaign year you have paid band members for playing at community events with funds from your principal campaign committee and reported the cost as a noncampaign disbursement. You have classified the payments as a noncampaign

disbursement because you do not perform for the purpose of campaigning for reelection.

5. After adjournment of the legislature during a campaign year you have paid band members for playing at community events with funds from your principal campaign committee and reported the cost as a campaign expenditure. The nature of the community event and the purpose for your bands participation in the event does not change during a campaign year. However, you categorize the payments to band members as campaign expenditures because you are a candidate at the time you play at the events and may benefit politically from your band's participation.

ISSUE ONE

May you use principal campaign committee funds to pay your band members for playing at campaign events and classify the cost as a campaign expenditure?

OPINION

Yes. Minn. Stat. §10A.01, subd. 9, defines "campaign expenditure" in part as "...a purchase or payment of money or anything of value, or an advance of credit, made or incurred for the purpose of influencing the nomination or election of a candidate.." The band is used as a mechanism to draw attention to the campaign and enhance campaign events. Payments to band members for playing at campaign events are a permitted use of campaign funds.

In most instances the cost of paying the band members to play at campaign events would be classified as a campaign expenditure. The exception is provided in Minn. Stat. §10A.01, subd. 26 (5), which states that the payment of costs associated with providing entertainment at a fund-raising event to benefit the candidate should be classified and reported as noncampaign disbursements.

ISSUE TWO

May you use principal campaign committee funds to pay your band members for playing at "community events" and classify the cost as a noncampaign disbursement?

OPINION

No. The funds of a principal campaign committee may only be used for the campaign purposes listed in Minn. Stat. §211B.12, or the list of noncampaign disbursements provided in Minn. Stat. §10A.01, subd. 26, and Minnesota Rules 4503.0900. Of the permitted noncampaign disbursements the only classification that might be used to justify payments to band members for playing at events unrelated to the campaign is "services for a constituent". However, Minnesota Rules 4503.0100, Subp. 6, precludes that classification. This rule defines services for a constituent and provides in part that constituent services "...does not include gifts, congratulatory advertisements, charitable contributions, or similar expenditures."

It is the Board's view that when the band plays at community events without compensation it is providing a gift to the community. While providing the gift of music and entertainment to the community is laudable, it is not an activity that may be supported with principal campaign committee funds.

The Board notes that Minn. Stat. §211B.12 allows candidates to use funds from their principal campaign committee to make charitable contributions of not more than \$50 to any charity annually. If the community organizations are charitable organizations either registered as such with the Office of the Attorney General under Minn. Stat. § 309.52, or exempt from registration under Minn. Stat. § 309.515, your committee could pay up to \$50 per charity annually for band members to play at community events.

ISSUE THREE

May you use principal campaign committee funds to pay your band members for playing at "community events" and classify the cost as a campaign expenditure?

OPINION

No. As provided in the facts of this request the nature of the community events and the reason for your band's participation in the events does not change from non-election year to election year. While it may be that you will incidentally benefit from increased name recognition and good will for your band's participation in the community event, the purpose of the event remains nonpolitical. Almost all types of community activity, from coaching a child's soccer team to participation in religious services, provide name recognition and a certain amount of good will to the participant. A candidate cannot be expected to view all community activity as being for the purpose of seeking election and account for their participation as a campaign expenditure paid for with principal campaign committee funds.

Activities that may not be categorized as a campaign expenditure or a noncampaign disbursement must not be paid for with principal campaign committee funds. The candidate must reimburse the principal campaign committee for payments to band members for events unrelated to the conduct of the campaign.

**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: January 25, 2005

RE: Solicitation of Funds During a Regular Legislative Session

ADVISORY OPINION 363

SUMMARY

A principal campaign committee that solicits contributions during a regular legislative session should diligently work to ensure that registered lobbyists are not on the mailing list and include language in a fundraising letter that makes it clear that registered lobbyists may not contribute during a regular legislative session.

FACTS

As a State Representative 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. Your committee would like to send a fundraising letter to individuals who have contributed to your committee in the past, and to constituents who have allowed your committee to place yards signs on their property.
2. You would like to send the fundraising letter during the 2005 regular legislative session.
3. You are aware that Minn. Stat. §10A.273, subd. 1, in part prohibits a candidate for the legislature or the candidate's principal campaign committee from soliciting or accepting a contribution from a registered lobbyist during a regular session of the legislature.
4. Your campaign staff has carefully examined the mailing list for the fundraising letter and you believe that all registered lobbyist have been deleted from the mailing list.
5. You state that you will include the following provision in your fundraising letter: "If you are a registered lobbyist and you have inadvertently received this letter, by law I cannot accept contributions from lobbyists during the session."

ISSUE ONE

Will the fundraising letter as described in the facts of this advisory opinion violate the prohibition on soliciting contributions from lobbyists if it is inadvertently sent to a registered lobbyist?

OPINION

No. As provided in the facts of this advisory request your committee has taken reasonable and prudent steps to prevent the mailing of the fundraiser letter to a registered lobbyist. Further, by including language that informs registered lobbyists that they may not contribute to your campaign during the legislative session, the letter makes it clear that registered lobbyists are not being asked to contribute.

Your committee is encouraged to compare contributions received during the legislative session with the list of registered lobbyists, as updated daily, on the Board's website. Regardless of the intent of the fundraising letter, a contribution from a registered lobbyist that is not returned to the donor within 60 days of receipt of the contribution is in violation of Minn. Stat. §10A.273, subs. 1 and 2.

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

Issued to: Superintendent Patricia Harvey
Saint Paul Public Schools
360 Colborne Street
St. Paul, MN 55102-3299

**Issued: January 25, 2005
Modified: February 22, 2005**

RE: Gift Prohibition; Educational Sessions, Food and Beverages

ADVISORY OPINION 364

SUMMARY

Lobbyist principals may pay for the cost of educational sessions for legislators that provide information used by the legislators in the performance of their official duties. Lobbyist principals may not provide complementary food and beverages to legislators who attend the educational sessions.

FACTS

On behalf of the Saint Paul Public Schools, an association that has 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 Minneapolis Foundation and Independent School District 625 are Lobbyist "Principals" as defined in Minn. Stat. §10A.01, subd. 33, because the associations have engaged lobbyists who are registered with the Board.
2. The Minneapolis Foundation and Independent School District 625 are planning to sponsor a series of educational sessions at the Minnesota History Center. The sessions will present nationally recognized experts in the field of education, and will provide an opportunity for discussions on educational policy.
3. Attendance at the sessions will be limited to legislators. Members of the legislature are "Public Officials" as defined in Minn. Stat. §10A.01, subd. 35.
4. You intend to provide legislators with food and beverages at the educational sessions.

ISSUE ONE

Are the educational sessions as described in the facts of this advisory opinion request a violation of the gift prohibition contained in Minnesota Statutes Chapter 10A?

OPINION

No. While Minn. Stat. §10A.071 generally prohibits lobbyists and lobbyist principals from providing gifts to public officials, the statute does provide a limited list of exceptions to the gift prohibition. In particular Minn. Stat. §10A.071, subd. 3(2), exempts “services to assist an official in the performance of official duties, including but not limited to providing advice, consultation, information, and communication in connection with legislation, and services to constituents;”. As described, the sessions will provide information and advice that will assist legislatures in the performance of an official duty, namely the drafting and passage of legislation related to education. Therefore, the sessions fall within this exception to the gift prohibition.

ISSUE TWO

May the Minneapolis Foundation and Independent School District 625 provide food and beverages to legislators at the sessions?

OPINION

No. Minn. Stat. §10A.071, subd. 3 (7) does provide that food and beverages may be an exception to the gift prohibition if “...the recipient appears to make a speech or answer questions as part of a program.” As provided in this advisory request, the format of the sessions is for the legislators to be the audience for a presentation; and then at their option ask questions or participate in a discussion of the presentation. The Board has consistently held (see Advisory Opinions 252, 259, 278, and 330) that a function that merely offers an opportunity for a public official to make a statement or answer questions does not meet the standard needed to trigger the exception for providing complimentary food and beverages.

**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 22, 2005

RE: In-Kind Contribution of a Local Access Cable TV Program

ADVISORY OPINION 365

SUMMARY

A political party unit that contributes time on a local cable TV program to a candidate is making an in-kind contribution to the candidate that counts against the party limit of the candidate. The in-kind contribution is categorized as either a campaign expenditure or a noncampaign disbursement by the candidate depending on the status of the candidate, the date(s) on which the program is broadcast, and other factors.

FACTS

As an officer with a political party unit registered with the Campaign Finance and Public Disclosure Board (the Board), you ask for an advisory opinion. The facts of the advisory opinion are based on the letter requesting the advisory opinion and conversations with Board staff.

1. Your party unit is considering the production of a local cable TV program for political purposes.
2. The political party unit will pay for the cost of producing the program. There may be an opportunity to staff the studio with volunteers from the political party unit who would not be paid for their work.
3. You anticipate interviewing candidates for state level office on the program. The candidates will be interviewed for perspectives on current issues and matters occurring in the legislature.
4. Candidates interviewed on the program may or may not represent a district, or seeking an office, that is within the viewing audience of the local cable network that will carry the program.
5. The programs will be taped. The programs may be broadcast on more than one occasion.

ISSUE ONE

Is the political party unit making an in-kind donation to a candidate if the candidate is interviewed on the local cable TV program for their perspectives on current issues and legislative events?

OPINION

Yes. As provided in the facts of this request, the party unit acknowledges a political purpose in paying for the production of the cable TV program. The Board assumes that the political purpose of any party unit is to elect and assist candidates of the party. The cable TV program has value to the candidates in the exposure it provides to the public of the candidate's name, political beliefs, and views on issues that are important to the candidate and presumably the viewing audience. Therefore, an appearance on the cable TV program meets the definition of Minn. Stat. §10A.01, subd.13, which provides that a "Donation in kind" is a donation of anything of value other than money or negotiable instruments.

ISSUE TWO

If a candidate hosts the program or a segment of the program, is the political party unit still making an in-kind contribution to the candidate?

OPINION

Yes. The role of host on the program would have at least as much value to the candidate as a guest appearance in that the same benefits of name recognition and distribution of the candidate's positions on the issues will occur.

ISSUE THREE

What factors should be considered in determining the value of the in-kind donation to the candidates that appear on the program?

OPINION

All in-kind donations must be assessed a fair market value (Minn. Stat. §10A.20, subd. 3). The fair market value is the cost the candidate's committee would have to pay if it was purchasing the item on the open market. Given the specifics of this request, the political party unit may need to consider the cost a candidate would have to pay for studio time and production crew costs. The Board understands that there may be an opportunity to staff the studio with political party unit volunteers who will not be paid for their work. If that occurs the volunteer's time is not an expenditure that should be included in determining the fair market value of the in-kind donation (Minn. Stat. §10A.01, subd. 9). If more than one candidate appears on a program, the fair market value would be a reasonable share of production and studio costs relative to the amount of screen time provided to each candidate (Minn. Rules 4503.0800, Subp. 2).

Candidates appearing on the program must count the in-kind donation against their limit for contributions from political party units (Minn. Stat. §10A.27, subd. 2). The candidate's committee must report the in-kind donation as an in-kind donation to the committee and as either an in-kind campaign expenditure or an in-kind noncampaign disbursement during the same reporting period in which the donation is received (Minn. Stat. §10A.20, subd. 3 (b), (g), and (l)).

The candidate receiving the in-kind donation of appearing on the program will report the donation as a campaign expenditure if the purpose of the candidate's appearance on the

program was to influence the nomination or election of the candidate. If the purpose of the candidate appearing on the program was to provide constituents with information on issues facing the state, the candidate may determine that the in-kind donation was used as a noncampaign disbursement for constituent services (Minn. Stat. §10A.01, subd. 26 (6)). To categorize the value of appearing on the cable TV program as a constituent services the candidate must be an incumbent office holder whose district is at least a subpart of the potential viewing audience. Categorizing a noncampaign disbursement as a constituent service is only available if the appearance on the program is broadcast from the beginning of the term of office to the adjournment sine die of the legislature in the election year for the office held. An appearance on the program that occurs during the 60 days following the adjournment of the legislature sine die may be reported as 50% constituent service and 50% campaign expenditure. An appearance on the program, or the rebroadcast of an appearance on the program, that occurs after 60 days following the adjournment of the legislature sine die is counted as entirely as a campaign expenditure.

ISSUE FOUR

If a particular program or segment of a program is played on the cable network multiple times is each screening a separate in-kind donation to a candidate who appears in the program or segment?

OPINION

Yes. The value to the candidate described in opinion one occurs every time the candidate's appearance on the program is broadcast. Multiple broadcasts of a program, or a segment of the program, containing the candidate represents multiple in-kind donations that will count against the candidate's party unit contribution limit and may count against the candidate's campaign expenditure limit. This type of in-kind donation is an approved expenditure that is made with the candidate's consent (Minn. Stat. §10A.01, subd. 4). If the value of the in-kind donation is over \$20 the treasure of the candidate's committee must provide written authorization to your political party unit stating the amount (value) of the in-kind contributions that your political party unit may provide to the candidate (Minn. Stat. §10A.17, subd. 2). This may mean a statement of the number of times the program or segment on which the candidate appeared may be played. The written authorization is a safe guard to avoid excess party unit contributions and/or excess campaign expenditures that could occur if the program or segment in question is broadcast numerous times.

If a candidate receives a tape of his or her appearance on the program the value of the tape should be included in the fair market value of the in-kind donation. If the candidate pays for the showing of the tape on another cable TV network, the candidate will be making an additional campaign expenditure or noncampaign disbursement unrelated to the in-kind donation made by the political party unit when the candidate appeared on the original cable TV program.

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

Issued to: Corey Miltimore, Executive Director
Republican Party of Minnesota
525 Park Street, Suite 250
St. Paul, MN 55103

Issued: February 22, 2005

RE: Reimbursement for Use of an Automobile

ADVISORY OPINION 366

SUMMARY

A principal campaign committee may reimburse the cost of operating a car used for campaign purposes at the appropriate per mile rate. The mileage reimbursement rate is set to include maintenance and insurance costs. Insurance should be used to cover the cost of repair for an automobile damaged while traveling to a campaign related event.

FACTS

On behalf of Republican Party of Minnesota, a party unit registered with the Campaign Finance and Public Disclosure Board (the Board), you ask for an advisory opinion to guide your conduct in the following scenarios. The opinion request posed two general hypothetical questions, and did not describe a specific incident or fact situation. The Board has therefore responded to the question without attempting to apply the applicable law to specific facts.

ISSUE ONE

May the funds of a principal campaign fund be used to repair an automobile damaged while traveling to a campaign related event?

OPINION

Yes. While Minnesota Rule 4503.0500, subpart 8, sets the prevailing IRS standard mileage rate as the value for use of an automobile by a principal campaign committee, the IRS rates are intended to reimburse for gas, oil, insurance, license, registration, tire wear, and general maintenance and repairs, but IRS rules allow additional deductibility of casualty losses for property damage not reimbursed by insurance or other sources. When another source of reimbursement is not available or not taken, so long as the car accident occurred during a campaign-related event, campaign funds may be used to reimburse the cost of repairing the damaged vehicle.

ISSUE TWO

May an individual receive the automobile mileage reimbursement referenced in Minnesota Rules 4503.0500, subpart 8, from a principal campaign committee for use of

their vehicle for a campaign related event and also submit additional bills to the principal committee for gas, repairs and maintenance of the automobile?

OPINION

Generally not. An individual may either apply for reimbursement under the standard mileage amount or may itemize for the cost of gas, repairs and other items related to the operation of the car during the trip. Standard mileage reimbursement may be claimed for driving of the vehicle, however, and when it is damaged in an accident, the cost of repairing it falls outside the typical maintenance and repairs covered by a standard mileage reimbursement.

ADVISORY OPINION REQUEST #367

This advisory opinion request was with 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: March 22, 2005

RE: Potential Conflict of Interest for a Member of the Legislature

ADVISORY OPINION 368

SUMMARY

Service by a member of the legislature on the board of an association does not in itself create a conflict of interest as defined in Minn. Stat. §10A.07. An official action or decision by the legislator may create a conflict of interest under specific circumstances.

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 for an advisory opinion based on the following facts that were provided in the letter requesting the advisory opinion and in a conversation with Board staff.

1. You have been asked to serve on the Advisory Board of an Association.
2. You will not be compensated for service on the Advisory Board.
3. You have no securities or other investments related to the parent Association of the Advisory Board.

ISSUE ONE

Will service on the Advisory Board create a conflict of interest, as defined in Minn. Stat. §10A.07, with your service in the State Legislature?

OPINION

No. Minn. Stat. §10A.07 sets specific criteria that must exist before a conflict of interest occurs. Under this statute a conflict of interest occurs only if an official action by the legislator substantially affects the legislator's financial interests or the financial interests of an associated business in a manner greater than it affects other members of the same business classification, profession or occupation. In the facts provided in this request, you will not be compensated for service on the Advisory Board, and have no investments in the Advisory Board's parent Association. Without compensation or investments in the Association, your official actions cannot substantially affect your financial interests. Further, the Association is not an "associated business", as defined by Minn. Stat. §10A.01, subd. 5, because the Association will not be compensating you more than \$50 a month (not including actual and reasonable expenses), and you do not have at least \$2,500 in securities invested in the Association.

If at some future time you were compensated for service on the Advisory Board and/or the Association became an associated business of yours, a conflict of interest could potentially occur on a specific official action or decision you may make as a legislator. Service on the Advisory

Board in itself would not constitute a conflict of interest under the provisions of Minn. Stat. §10A.07.