

**STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD**

.....

November 5, 2013

Room 220

Minnesota Judicial Center

.....

MINUTES

The meeting was called to order by Chair Wiener.

Members present: Beck, Peterson, Sande, Scanlon, and Wiener
Member Oliver arrived during the Executive Director topics.

Others present: Goldsmith, Sigurdson, Schroeder, Larson, Pope staff; Hartshorn, counsel

Introduction of new member – Christian Sande

Chair Wiener introduced Christian Sande. Mr. Sande was appointed by the Governor to replace former member Andrew Luger. Member Sande's term will end January of 2015.

MINUTES (September 10, 2013)

Member Peterson's motion: To approve the September 10, 2013, minutes.

Vote on motion: Unanimously passed (Sande abstained).

CHAIR'S REPORT

Board meeting schedule

The next Board meeting is scheduled for Tuesday, December 3, 2013.

EXECUTIVE DIRECTOR'S TOPICS

Executive Director Goldsmith reported on recent Board office operations.

Office operations and budget

Mr. Goldsmith informed members of his scheduled training sessions in greater Minnesota on November 14-15th and November 19-20th.

Legislative appropriation for increased staffing and infrastructure improvements

Executive Director Goldsmith presented the Board with a memorandum which is attached to and made a part of these minutes.

One of the Board's primary recommendations to the 2013 legislature was that it provide adequate funding to the Board for staff and infrastructure improvements. The legislature and the Governor included the Board's request in their budgets and did not require the establishment of a registration fee system to generate the money to pay for the increase.

The increase would provide for three things: (1) funding to maintain existing levels of staff and services that would have been cut if funding had remained level; (2) funding for a .4FTE clerical or administrative assistant position and a 1.0 FTE position that was titled "auditor – investigator;" and (3) about \$130,000 per year for infrastructure improvements.

Two of the key infrastructure improvements identified to the legislature were complete redesign of the Board's website and conversion to electronic records.

Staffing update

The position that had the working title of "auditor – investigator" during the session has now been created and its title is "Management Analyst/ Legal Analyst." This title reflects the evolution of the position and the recognition throughout the process that it would be a management support position with multiple responsibilities.

The new Management Analyst position will help develop policies and procedures for expenditure review and will conduct those reviews. The new position will help develop and implement procedures to more closely evaluate the adequacy of lobbyist and principal reports; assist in the development of better educational programs and materials; and assist in the improvement of internal processes so that the Board's work is both more efficient and error-free. This position will also relieve the Executive Director and Assistant Director from directly conducting some investigations.

The administrative assistant position will relieve the Assistant Executive Director from some routine tasks that he currently handles with respect to obtaining purchase orders and paying invoices and will relieve other programs staff from tasks that can be handled by a position that does not require a deep understanding of the Board's complex programs.

Infrastructure

At the end of fiscal year 2013, staff began the work of infrastructure improvements by addressing the hardware and software needs. The Board's servers were running on the 2003 version of Microsoft's SQL Server database platform. We were able to design, specify, and purchase the necessary hardware with fiscal year 2013 savings that came mainly from salary savings due to an employee taking Family Medical Leave. The necessary software upgrades

and implementation services were purchased with 2014 funds. With most hardware and software infrastructure issues addressed, staff is ready to turn to the website itself and to electronic records conversion.

Mr. Goldsmith explained that staff is currently working on determining the underlying support structure on which the Board's website will be built. Most complex websites use software called a web content management system (MCMS) to maintain the site. This software allows non-technical staff to create and maintain content on the site, relieving IT staff for system tasks.

Staff is generally ready to begin development of specifications for the redesigned site. This process will take some months and will likely involve solicitation of input from the regulated communities as well as from any other interested groups or citizens.

The electronic records project is also important. Electronic records conversion and management is not as simple as just scanning files of paper into electronic folders. A software infrastructure is required to index and catalog documents for later access and retrieval. Policies and procedures must be in place regarding how the conversion works. It is important to have sufficient safeguards in place to ensure that the electronic document is an accurate and complete representation of the original paper document and that the electronic record will not be corrupted or somehow lost or destroyed.

It may be that both projects will require the publication of requests for proposals and the receiving of proposals. This must now be done in the new SWIFT system. The Board has no staff trained in the SWIFT system since the SmART team provides all of our SWIFT operations. The SmART team has said that they will not be handling the contracting of RFP processes in SWIFT. That will be left to the agencies. Mr. Goldsmith explained that he would work with SmART or another agency to overcome this hurdle and if necessary should be able to contract for some limited assistance with some other agency in state government.

Disclosure Conference

Member Beck updated the Board on the status of a campaign finance disclosure seminar that will be held at the Humphrey Center for the Study of Governance and Politics. The seminar would be for the purpose of examining the importance of disclosure and explaining the areas in which Minnesota's campaign finance disclosure laws could be improved. The Board is not sponsoring the event, but the Executive Director is representing the Board as a subject matter expert and may have some role in presenting information on the current status of disclosure in Minnesota. The event is meant to be educational, and will hopefully be held prior to the next legislative session.

Correspondence from Todd Willmert

Executive Director Goldsmith presented the Board with a series of correspondence between himself and Mr. Todd Willmert which are made a part of these minutes by reference.

Mr. Willmert confirmed that he wished to have his emails considered as a complaint. Mr. Willmert alleged, among other things, malfeasance or nonfeasance in the judicial branch of government. He also alleged that Senator Ron Latz, Representative Debra Hilstrom, and perhaps others, have failed to file notice of conflict of interest pursuant to Minnesota Statutes section 10A.07.

Mr. Goldsmith informed Mr. Willmert that based on the information provided and after review of Chapter 10A, an investigation will not be undertaken for the reasons described in his letter which is attached to and made a part of these minutes.

Approval of Biennial Report

Assistant Executive Director Sigurdson presented the Board with the Biennial Report covering July 1, 2011 through June 30, 2013.

Grammatical changes were made to the report.

Member Beck's motion: To approve the Biennial Report as amended.

Vote on motion: Unanimously passed.

Review of first quarter spending

Mr. Goldsmith presented the Board with a spreadsheet which is attached to and made a part of these minutes.

Fiscal Year 2014 – first quarter is July 1 through September 30, 2013. The Board has expended 14% of allocated budget in the first quarter.

Reconciliation of Board Data

Mr. Goldsmith reviewed for the Board the content of an article by the Star Tribune that raised questions about the accuracy of campaign finance contribution data maintained in the Board's databases and made available to the public in searchable databases on the Board's website. In particular the Star Tribune found cases when contributions reported by a registered committee did not "reconcile" with the reporting of other registered committees. A contribution reconciles when the transfer of money is reported by both the committee that made the contribution and the committee that should have received the contribution.

Mr. Goldsmith explained the process for reconciling campaign contributions reported by registered committees and some of the problems that arise during reconciliation. Mr. Goldsmith informed the Board that because this matter was new, the staff analysis was very preliminary and that he would have a more detailed report for the Board at its next meeting. Mr. Goldsmith also gave his initial impressions as to the root causes of the data reconciliation issues but said that further research was required.

Board members discussed the matter and the consensus was that data published by the Board should reflect the filed reports as closely as possible.

Mr. Goldsmith informed members that to immediately address the issue, the searchable database on the Board's website has been modified so that only reconciled contributions between registered committees are displayed. The web pages used for the searchable databases now carry a disclaimer which explains that the searchable database contains only reconciled contributions and that the database is not the official record of contributions reported to the Board.

After discussion the following motion was made:

Member Beck's motion: Staff is directed to assign a high priority to issues related to the accuracy of data published on the Board's website and is to report back to the Board regularly on this matter.

Vote on motion: Unanimously passed.

LEGISLATIVE RECOMMENDATIONS

Mr. Goldsmith presented the Board with a memorandum which is attached to and made a part of these minutes.

The list of preliminary recommendations was taken from files and notes accumulated by staff over the past year. Staff asked the Board for direction as to which recommendations are accepted for incorporation into its 2014 legislative recommendations.

After discussion, the Board decided to continue evaluating the proposed changes at the next meeting.

Draft bill for technical changes is attached to and made a part of these minutes.

ENFORCEMENT REPORT

Discussion Items

A. Waiver Requests

<u>Name of Candidate or Committee</u>	<u>Reason for Fine</u>	<u>Late Fee Amount</u>	<u>Civil Penalty Amount</u>	<u>Factors for waiver</u>	<u>Board Member's Motion</u>	<u>Motion</u>	<u>Vote on Motion</u>
Michael Katch Progressive for MN	2010, 2011, 2012 Year-end Reports	\$3,000 Total	\$2,800 Total	The Committee registered July 21, 2006, which was the only year that Mr. Katch ran for office. The candidate's spouse, Peggy Katch became the treasurer July 2007 and	Scanlon	To waive the late fees and civil penalties.	Unanimous

				has had health issues that have caused the late filing of reports. The report for 2006 shows unpaid bills of \$2,617. Ms. Katch was contacted and urged to send the required certified letters to the individuals that the committee reported owing and send copies to the Board so the committee could terminate. Ms. Katch is one of the individuals listed for a \$400 loan and an unpaid bill of \$250 for "campaign services work". The committee has filed "no change" reports for subsequent years. Staff contacted Ms. Katch several times to explain the process for termination. The reason the committee has remained active is because of the remaining unpaid bills. Mr. Katch has been referred to the Minn Dept. of Revenue for collection of late fees for the pre-general and year-end 2006 reports totaling \$2842.			
Peter Roess, lobbyist for Clean Water Dream Team	Lobbyist Disbursement Report due June 15, 2013	\$100	\$800	Mr. Roess registered as a lobbyist in April 2007. All reports filed show no disbursements except for June – Dec of 2011 on which he reported \$35 in disbursements. Mr. Roess has a health issue that caused the late filing. He has terminated his lobbyist registration.	Peterson	To waive the late fees and civil penalties.	Unanimous

B. Authorization for Staff to Administratively Terminate an Inactive Committee. The following principal campaign committee has not filed the 2012 pre-general-election or year-end Report of Receipts and Expenditures and has not responded to Board staff:

Walker (Marcus) for MN Senate. Marcus Walker registered a committee January 27, 2012. He filed for office in 2012 but did not win the primary. His pre-primary-election report disclosed \$215 in receipts and \$214 in expenditures. It was filed on August 3, 2012, and incurred a \$200 late filing fee. The pre-general-election and year-end reports were not filed. Staff contacted Mr. Walker by phone November 6, 2012, regarding the pre-general-election report. He said his committee was not active but had one ongoing bill for a one-year agreement for a virtual office. Staff informed him of the late filing fee for the pre-primary-election report. He stated he would file the pre-general-election report; however, it has not been received. Staff attempts to contact Mr. Walker again have been unsuccessful.

After discussion the following motion was made:

Member Peterson's motion: To approve the administrative termination of the Walker (Marcus) for MN Senate Committee.

Vote on motion: Unanimously passed.

C. 2012 Annual Report of Lobbyist Principal reports not filed. The following three lobbyist associations have not filed the 2012 Annual Report of Lobbyist principal due March 15, 2013: Forest Workers League of MN, Renewable Energy SD LLC, and Judicial Commonsense.

The lobbyists registered for two of the associations have terminated their registrations. Staff seeks authorization from the Board to stop efforts to compel the filing of the 2012 Annual Report of Lobbyist Principal or to collect late filing fees and penalties.

The Forest Workers League of MN had one lobbyist who was also the president for the association. Forrest Wilkinson registered to lobby on January 27, 2012. He filed lobbyist reports that disclosed no disbursements. Mr. Wilkinson filed a termination statement on April 15, 2013.

Renewable Energy SD LLC had five lobbyists who registered in 2011. The 2011 Annual Report of Lobbyist Principal was filed and the lobbyists who were registered all terminated in 2011. The lobbyists registered in 2011 reported no lobbying disbursements. One lobbyist registered in September 2012 and reported \$1,206 in disbursements. He terminated his registration in February 2013. Renewable Energy SD filed for Chapter 7 bankruptcy in June 2013. Staff also requests that the 2013 Annual Report of Lobbyist Principal not be required.

Judicial Commonsense. Staff has attempted to contact Michael Harasyn, listed as the director of the association, by phone and e-mail several times. There has been no response. Michael Harasyn registered to lobby for Judicial Commonsense in February 2010. He listed only himself under the officers and directors represented. The 2010 and 2011 Annual Reports of Lobbyist Principal were filed. The 2011 report disclosed \$125 spent. All lobbyist reports filed disclosed no disbursements except for the period from June 1 to December 31, 2011, which disclosed \$103.25.

After discussion the following motion was made:

Member Peterson's motion:	To stop staff efforts to compel the Forest Workers League of MN, Renewable Energy SD LLC, and Judicial Commonsense to file their 2012 principal report or pay late filing fees.
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Vote on motion:	Unanimously passed.
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Informational Items

A. Payment of a late filing fee for January 31, 2013, year-end report:

Rob Broberg for Senate, \$1,000
Branden Petersen for State House, \$1,000
Petersen (Branden) for Senate, \$300
Goodhue County RPM, \$175

B. Payment of civil penalty for 2012 year-end report:

Rob Broberg for Senate, \$1,000
Branden Petersen for State House, \$500

C. Payment of a late filing fee for a 24 hour pre-election notice:

Ted Daley for Senate, \$250

D. Payment of a late filing fee for a Statement of Economic Interest:

Jay Estling, Roseau SWCD, \$50
John Gunvalson, Clearwater SWCD Area 8, \$30
Jared Nordick, Wilkin SWCD, \$80
Gwen Willems, Ramsey Conservation District, \$75

E. Payment of a civil penalty for a contribution from an unregistered association:

Jeanne Poppe for the People, \$400
UFCW International Union CLC, \$400

F. Payment of a civil penalty for exceeding the party unit aggregate contribution limit:

Joe Radinovich for House, \$200. During 2012, the Committee accepted aggregate contributions from a party unit and terminating principal campaign committees in the amount of \$5,200. This amount exceeds the \$5,000 election year limit on contributions from party units and terminating principal campaign committees, set out in Minnesota Statutes section 10A.27, subdivision 2, by \$200. Representative Joe Radinovich entered into a conciliation agreement on September 13, 2013.

Matt Schmit for Senate, \$25. During 2012, the Committee accepted aggregate contributions from party units in the amount of \$5,025. This amount exceeds the \$5,000 election year limit on contributions from party units and terminating principal campaign committees, set out in Minnesota Statutes section 10A.27, subdivision 2, by \$25. Senator Schmit entered into a conciliation agreement on September 15, 2013.

Ron Erhardt Volunteer Committee, \$200. During 2012, the Committee accepted aggregate contributions from party units and terminating principal campaign committees in the amount of \$5,200. This amount exceeds the \$5,000 election year limit on contributions from party units and terminating principal campaign committees, set out in Minnesota Statutes section 10A.27, subdivision 2, by \$200. Representative Erhardt entered into a conciliation agreement on September 24, 2013.

G. Payment of a civil penalty for excess special source contributions:

Committee to Elect John Ward, \$230. During 2012, the Committee accepted \$7,130 in contributions from special sources. These sources include registered lobbyists from whom the Committee accepted \$200, and political committees or political funds from which the Committee accepted \$6,930. The total amount of these contributions exceeded by \$230 the applicable limit on aggregate contributions from special sources, which for a state representative candidate was \$6,900. Representative John Ward entered into a conciliation agreement on August 9, 2013.

Volunteers for Russ Bertsch, \$618. During 2012, the Committee accepted \$8,850 in contributions from special sources. These sources include large givers from whom the Committee accepted \$6,100, registered lobbyists from whom the Committee accepted \$1,050, and political committees or political funds from which the Committee accepted \$1,700. The total amount of these contributions exceeded by \$1,950 the applicable limit on aggregate contributions from special sources, which for a state representative candidate was \$6,900. Mr. Bertsch entered into a conciliation agreement on September 9, 2013.

Warren Limmer for Senate, \$400. During 2012, the Committee accepted \$14,000 in contributions from special sources. These sources include large givers from whom the Committee accepted \$800, registered lobbyists from whom the Committee accepted \$3,650, and political committees or political funds from which the Committee accepted \$9,550. The total amount of these contributions exceeded by \$400 the applicable limit on aggregate contributions from special sources, which for a state senate candidate was \$13,600. Senator Limmer entered into a conciliation agreement on October 2, 2013.

David Dill for MN 3A, \$500. During 2012, the Committee accepted \$8,230 in contributions from special sources. These sources include large givers from whom the Committee accepted \$3,350, registered lobbyists from whom the Committee accepted \$650, and political committees or political funds from which the Committee accepted \$4,230. The total amount of these contributions exceeded by \$1,330 the applicable limit on aggregate contributions from special sources, which for a state representative candidate was \$6,900. Representative Dill entered into a conciliation agreement on August 20, 2013.

Duane Quam for House, \$300. During 2012, the Committee accepted \$7,200 in contributions from special sources. These sources include large givers from whom the Committee accepted \$2,000, registered lobbyists from whom the Committee accepted \$185, and political committees or political funds from which the Committee accepted \$5,015. The total amount of these contributions exceeded by \$300 the applicable limit on aggregate contributions from special sources, which for a state representative candidate was \$6,900. Representative Quam entered into a conciliation agreement on September 20, 2013.

ADVISORY OPINIONS

Advisory Opinion 436

Mr. Sigurdson presented the Board with a memorandum which is made a part of these minutes by reference.

The request for Advisory Opinion 436 was received on September 30, 2013. The requestor wishes to remain anonymous.

The request asks for the Board's guidance on two questions. First, may registered committees purchase research and polling services as a defined package for a flat annual fee without creating an in-kind contribution to other committees who purchase the same services at the same flat annual fee? Second, may registered committees jointly purchase research and polling services without creating an in-kind contribution to other committees that participate in the joint purchase?

The draft opinion states that the facts of the request provide no basis for the Board to conclude that the purchase of defined services for a flat annual fee is anything more than a commercial transaction between the company providing the services and the registered committees that purchase the services.

The draft opinion further provides that if all participants in a joint purchase of research and polling services have a bona fide use for the services, and each committee pays an equal or proportionate share of the cost of the services, then an in-kind contribution between the participants in the purchase will not occur.

The draft opinion was amended to clarify that the opinion is given to a commercial vendor of research and polling services.

After discussion the following motion was made:

Member Scanlon's motion: To adopt Advisory Opinion 436 as amended.

Vote on motion: Unanimously passed.

Advisory Opinion 437

Mr. Goldsmith presented the Board with a memorandum which is attached to and made a part of these minutes.

This request is non-public. The requestor is an attorney representing a candidate who has been asked to participate in fundraising activities of an independent expenditure political committee that might wish to make independent expenditures to influence the election of that same candidate. The request asks if the candidate's participation in fundraising for the independent expenditure committee will destroy the independence of any expenditure made by that committee to expressly advocate for that candidate.

After discussion the following motion was made:

Member Oliver's motion: To lay the matter over until the next Board meeting.

Vote on motion: Unanimously passed.

LEGAL COUNSEL'S REPORT

Board members reviewed a memo from Counsel Hartshorn outlining the status of cases that have been turned over to the Attorney General's office. The Legal Counsel's Report is made a part of these minutes by reference.

EXECUTIVE SESSION

The Chair recessed the regular session of the meeting and called to order the Executive Session. Upon completion of the Executive Session, the regular session of the meeting was called back to order and the following items were reported from the Executive Session:

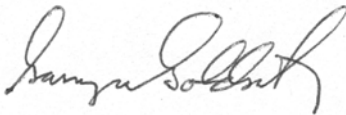
Findings and Order in the Matter of a Contribution to the Cass County DFL Committee from the Leech Lake Gaming Division

The Chair reported that in its executive session, the Board made findings and issued an order in the above matter. See Findings and Order which are attached to and made a part of these minutes.

OTHER BUSINESS

There being no other business, the meeting was adjourned by the Chair.

Respectfully submitted,



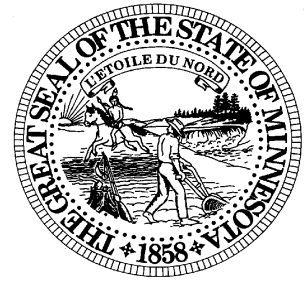
Gary Goldsmith
Executive Director

Attachments:

- October 29, 2013, memorandum regarding legislative appropriation for increased staffing and infrastructure improvements
- October 2, 2013, Executive Director letter regarding the refusal of a Board investigation
- Fiscal Year 2014 – First Quarter financial report
- October 29, 2013, memorandum regarding technical legislative recommendations
- Draft technical bill
- Draft legislative recommendations
- Advisory Opinion 436 – public version
- October 29, 2013, memorandum regarding draft Advisory Opinion 437
- Draft Advisory Opinion 437 – public version

Minnesota

Campaign Finance and Public Disclosure Board



Date: October 29, 2013

To: Board members

From: Gary Goldsmith, Executive Director

Telephone: 651-539-1190

Re: Legislative appropriation for increased staffing and infrastructure improvements

Background

As many of you know, one of the Board's primary recommendations to the 2013 legislature was that it provide adequate funding to the Board for staff and infrastructure improvements. In advocating for that recommendation, I made many presentations to the legislature. In the course of those presentations, I developed a one-page encapsulation of my multi-page hand-out. This one-page document was given out in most committees and I attach a copy to this memo as a refresher on our approach in 2013.

I and the Board were gratified that the legislature and the Governor included the Board's request in their budgets and did not require the establishment of a registration fee system to generate money to pay for the increase.

Although not shown on the short version of the analysis, the long version and my testimony explained that the increase would provide for three things: (1) funding to maintain existing levels of staff and services that would have been cut if funding had remained level; (2) funding for a .4 FTE clerical or administrative assistant position and a 1.0 FTE position that was titled "auditor-investigator" in my more detailed legislative materials; and (3) about \$130,000 per year for infrastructure improvements.

Two of the key infrastructure improvements that I identified to the legislature were complete redesign of the Board's website and conversion to electronic records.

Staffing Update

The position that had the working title of "auditor-investigator" during the session has now been created and its title is "Management Analyst/Legal Analyst". This title reflects the evolution of the position and the recognition throughout the process that it would be a management support position with multiple responsibilities.

The new position is expected to relieve the Executive Director and Assistant Executive Director from much of their direct work in conducting investigations and writing legal materials. The Executive Director and Assistant Executive Director would move into supervisory and management roles with respect to those tasks. The legislature recognized that I and Jeff were spending much of our time conducting investigations and, as a result, could not actually manage the agency in terms of improving client outreach and education, examining and improving internal programs and processes, and making progress toward strategic goals such as the website redesign and the electronic records conversion. Both of these projects will be multi-year and will require much management involvement.

As I have pointed out to Board members from time to time and as I pointed out to the legislature, we have never done any form of compliance on expenditures in the campaign finance program other than to verify that candidates stay within their limits. In other words, we have not looked at how money is spent, whether it is reported in correct categories, or whether an expenditure is reported with an appropriate level of description. Now that the Board has jurisdiction over the Chapter 211B provision regarding use of money collected for political purposes, it will be important to begin looking at how money is used. The new Management Analyst position will help develop policies and procedures for expenditure review and will conduct those reviews.

I also explained to the legislature that we have done essentially no compliance testing in the lobbying program. The new position will help develop and implement procedures to more closely evaluate the adequacy of lobbyist and principal reports.

The management analyst component of the new position will include assistance in the development of better educational programs and materials and in the improvement of internal processes so that the Board's work is both more efficient and error-free.

The administrative assistant position will relieve the Assistant Executive Director from some routine tasks that he currently handles with respect to obtaining purchase orders and paying invoices and will relieve other programs staff from tasks that can be handled by a position that does not require a deep understanding of the Board's complex programs.

Infrastructure

At the end of FY 2013, we began the work of infrastructure improvement by addressing hardware and software needs. Our servers were beyond their normal life expectancy and some of our databases were running on the 2003 version of Microsoft's SQL Server database platform. We were able to design, specify, and purchase the necessary hardware with FY 2013 savings that came mainly from salary savings due to an employee taking Family Medical Leave. We purchased the necessary software upgrades and implementation services with 2014 funds and have now completed the conversion. With most hardware and software infrastructure issues addressed, we are ready to turn to the website itself and to electronic records conversion.

We are currently involved in determining the underlying support structure on which the Board's website will be built. Most complex websites use software called a web content management system (WCMS) to maintain the site. This software allows non-technical staff to create and maintain content on the site, relieving IT staff for systems tasks. Before looking at a broad range of possible WCMS packages, we are working with MN.IT Services to determine whether the state's WCMS will meet our needs and can be implemented with the funding we would have available. It would be my preference to adopt the state system if our needs and the system's capabilities can converge.

We are generally ready to begin development of specifications for the redesigned site. This process will take some months and will likely involve solicitation of input from the regulated communities as well as from any other interested groups or citizens.

The problem we face now is that at the present time we are still dealing with several complex matters that are taking up a very significant amount of both my and Jeff's time. We will need to get through these matters, or get the new Analyst on board before significant management time can be devoted to the website project.

The electronic records project is also important, though not as obvious to clients as the website. Electronic records conversion and management is not as simple as just scanning files of paper into electronic folders. A software infrastructure is required to index and catalog documents for later access and retrieval. Policies and procedures must be in place regarding how the conversion works. It is important to have sufficient safeguards in place to ensure that the electronic document is an accurate and complete representation of the original paper document and that the electronic record will not be corrupted or somehow lost or destroyed. I don't expect to make much progress on this project until we have made significant headway on the website project.

We face one additional hurdle with both projects. That is the fact that both will require the publication of requests for proposals and the receiving of proposals. That must now be done in the new SWIFT system. The Board has no staff trained in the SWIFT system since the SmART team provides all of our SWIFT operations. However, thus far the SmART team has said that they will not be handling the contracting or RFP processes in SWIFT. That will be left to the agencies. I will work with SmART or another agency to overcome this hurdle. If necessary we should be able to contract for some limited assistance with some other agency in state government. Barring that, it is possible that the new administrative assistant may need to be trained on the SWIFT RFP and contracting processes.

October 2, 2013

Mr. Todd Willmert
6630 Normandale
Minneapolis, MN 55439

Re: Your correspondence of September 30 and previous dates

Dear Mr. Willmert:

I am assuming that your correspondence of September 30, 2013, along with your previous communications is intended to constitute a formal complaint filed with the Campaign Finance and Public Disclosure Board alleging a violation of Minnesota Statutes Chapter 10A.

When the Board receives a complaint the Executive Director, under delegated authority, reviews the complaint and the relevant law and makes a determination as to whether the complaint is one that requires a Board investigation. In the case of your complaint, I have determined that an investigation will not be undertaken for the reasons described in this letter. When the Executive Director determines that a submission does not constitute a complaint that requires investigation, the matter is presented to the Board at its next meeting. The Board, of course, can overrule the Executive Director's determination and order an investigation. The next Board meeting is scheduled for November 5, 2013.

Your communications are in some respects broad and general. They allege, among other things, malfeasance or nonfeasance in the judicial branch of government. The Board has no jurisdiction to determine whether the judicial branch has or has not performed its statutory duties.

Your complaint, as it relates to Chapter 10A, appears to be that Senator Ron Latz, Representative Debra Hilstrom, and perhaps others, have failed to file notices of conflict of interest pursuant to Minnesota Statutes section 10A.07. Section 10A.07 reads as follows:

10A.07 CONFLICTS OF INTEREST.

Subdivision 1. **Disclosure of potential conflicts.** A public official or a local official elected to or appointed by a metropolitan governmental unit who in the discharge of official duties would be required to take an action or make a decision that would substantially affect the official's financial interests or those of an associated business, unless the effect on the official is no greater than on other members of the official's business classification, profession, or occupation, must take the following actions:

- (1) prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict of interest;

- (2) deliver copies of the statement to the official's immediate superior, if any; and
- (3) if a member of the legislature or of the governing body of a metropolitan governmental unit, deliver a copy of the statement to the presiding officer of the body of service.

If a potential conflict of interest presents itself and there is insufficient time to comply with clauses (1) to (3), the public or local official must orally inform the superior or the official body of service or committee of the body of the potential conflict.

Subd. 2. Required actions. If the official is not a member of the legislature or of the governing body of a metropolitan governmental unit, the superior must assign the matter, if possible, to another employee who does not have a potential conflict of interest. If there is no immediate superior, the official must abstain, if possible, in a manner prescribed by the board from influence over the action or decision in question. If the official is a member of the legislature, the house of service may, at the member's request, excuse the member from taking part in the action or decision in question. If the official is not permitted or is otherwise unable to abstain from action in connection with the matter, the official must file a statement describing the potential conflict and the action taken. A public official must file the statement with the board and a local official must file the statement with the governing body of the official's political subdivision. The statement must be filed within a week of the action taken.

Subd. 3. Interest in contract; local officials. This section does not apply to a local official with respect to a matter governed by sections 471.87 and 471.88.

When reviewing the application of a statute, it is important to recognize that the titles of the section or of the subdivisions are not part of the law. Minnesota Statutes section 645.49 provides:

645.49 HEADNOTES.

The headnotes printed in boldface type before sections and subdivisions in editions of Minnesota Statutes are mere catchwords to indicate the contents of the section or subdivision and are not part of the statute.

Based on this statutory mandate, the Board does not typically use the shorthand phrase "conflict of interest". Rather, it uses the statutory criteria of §10A.07, subdivision 1, to determine when a notice should be filed.

If a notice under §10A.07 is required of a member of the legislature, that notice would be filed with the presiding officer of the body in which the member serves. For the purpose of analysis of your complaint, I have assumed that no such notices were filed by Senator Latz or Representative Hilstrom. The question for the Board is whether your complaint alleges a sufficient factual basis to determine that such a notice *should have been* filed.

Section 10A.07 applies only when an official "who in the discharge of official duties would be required to take an action or make a decision." Finding that the official is required to take an action or make a decision is precedent to a determination of whether that action " would substantially affect the official's financial interests or those of an associated business." Your complaint is not accepted because it does not allege any required action or decision on the part of an official. A required action or decision for a legislator typically takes the form of a vote on a

matter. In the case of a committee chair, it can take the form of a decision to allow or deny a committee hearing on a bill that the author has requested come before the committee.

In your initial email to me on September 20, you allege that officials demonstrated an "unwillingness to address their constitutional charge to oversee the judiciary." Even if the legislature has a constitutional charge to oversee the judiciary, that general charge does not rise to the level of requiring any specific action. The thrust of your complaint seems to be that the Supreme Court did not enact certain standards mandated by statute. However, there is no affirmative obligation on the legislature as a whole, or on any individual legislator, to take affirmative action to enforce a statute. Thus an allegation of a general unwillingness to undertake oversight does not rise to the level of a "required" action or decision.

In your email of September 23, you argue that Senator Latz and Representative Hilstrom "made a decision not to use their authority . . . to address significant problems [with the judiciary]" and that they made a decision to "disregard or otherwise ignore substantive and systemic court non/malfeasance." I reiterate that there is no obligation on the legislature as a whole or on any individual legislator, whether a committee chair or not, to investigate or take action when allegations of failure to comply with a law arise. In general, there is no obligation on the legislature under any circumstances to investigate the judicial branch. As §10A.07 is written, failure to take action when the action is purely discretionary does not trigger application of the notice requirement.

I would like to mention that the legislature and the Board are reviewing Minnesota's conflict of interest statutes and it is possible that a bill will be considered in the 2014 session. I encourage you to monitor the Board's website, which is where the Board announces its legislative recommendations. If a bill is introduced, it is likely that disclosure of potential conflicts will be strengthened, but I do not think that any bill will cover the failure to take an action that is purely discretionary.

In your letter of September 24 you raise a number of questions which I will address. First, as indicated, I am treating your letter and other communications as a complaint. By this letter, I am declining to initiate a Board investigation of your complaint. Under standard Board practice, the Board will have your materials and this letter for review at its November meeting. If the Board agrees with the Executive Director's disposition of the matter, no vote will be taken. If a member wishes to initiate an investigation, a motion will be made and a vote taken. Because I have declined to investigate your complaint, this letter and your communications are public information and will be placed in the Board's correspondence files. Any discussion of this matter will occur in the public session of the November meeting.

You ask if Senator Latz has filed a statement under §10A.07 with the Board. I have previously informed you and reiterate that he has not. However, even if a statement was required under §10A.07, it would not be filed with the Board.

You mention the concept of legislative intent and suggest that §10A.07 might be interpreted expansively. However, the rules of statutory construction require that an agency apply the words of a statute as written if they are clear. In the case of §10A.07, it is clear that the notice requirement can apply only when an official is "required" to take an action or make a decision. If the words of a statute are clear, the language controls and legislative intent is not a consideration.

The remainder of your September 24 letter deals primarily with your concerns about conduct of the judicial branch and the relationship between Senator Latz and the judiciary. As I have noted, neither subject is relevant to the determination I make on behalf of the Board in this matter because no required action or decision is involved.

In an email dated September 28 you ask about the Board's operations. Presently the Board has five members as we are awaiting the Governor's appointment of a member to replace Mr. Luger who resigned. The Board operates pursuant to Minnesota Statutes section 10A.02 and does not have bylaws. The Board publishes a report every two years following an election. The last report covered through the 2010 election. The next report is in the final editing stage in our offices.

Chapter 10A does not, in general, deal with ethics, as you state. Most of Chapter 10A is related to campaign finance and lobbying regulation and disclosure. In fact, the act is referred to as the Campaign Finance and Public Disclosure Act, not the Ethics in Government Act. The act requires disclosure of potential conflicts of interest in specified situations. It does not attempt to regulate ethics in general. Whether an official's action betrays public trust or brings dishonor or disrepute on a body of the legislature, as you allege, is not a subject governed by Chapter 10A.

Your letter of September 30 adds nothing further to support your complaint and will not be further discussed here.

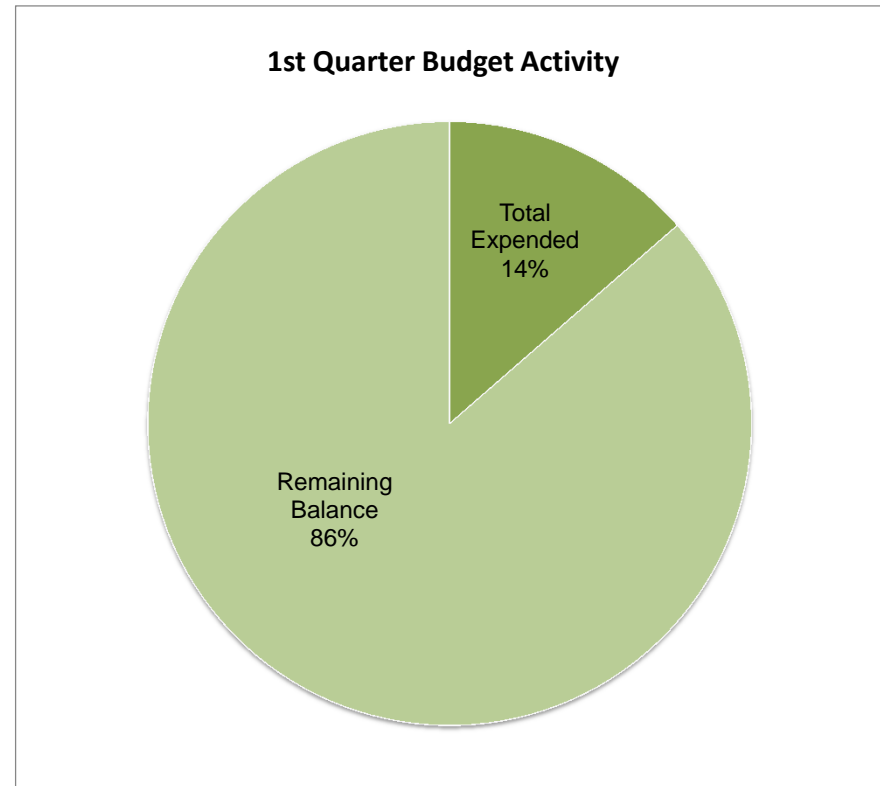
Consistent with Board policy, I will be providing Senator Latz and Representative Hilstrom each with a copy of your complaint and this response.

Sincerely,

Gary Goldsmith
Executive Director

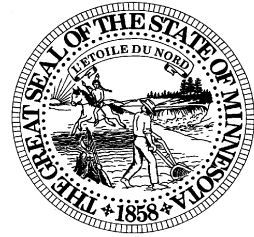
Fiscal Year 2014
First Quarter Report - July 1, 2014 through September 30, 2014

	Budget	Expended	Percentage	Balance
Full time salaries	\$708,000.00	\$116,549.67	16.46%	\$591,450.33
Part time salaries	\$65,000.00	\$5,923.64	9.11%	\$59,076.36
Space Rental	\$39,966.00	\$9,872.76	24.70%	\$30,093.24
Other Benefits	\$5,000.00	\$932.00	18.64%	\$4,068.00
Repairs	\$500.00	\$0.00	0.00%	\$500.00
Printing	\$4,200.00	\$0.00	0.00%	\$4,200.00
Professional Legal Services	\$10,000.00	\$760.80	7.61%	\$9,239.20
IT Professional Technical Services	\$116,500.00	\$0.00	0.00%	\$116,500.00
MNIT Provided IT Services	\$20,500.00	\$508.17	2.48%	\$19,991.83
Postage	\$7,700.00	\$0.00	0.00%	\$7,700.00
Travel - In State	\$1,400.00	\$248.12	17.72%	\$1,151.88
Travel - Out of state	\$5,400.00	\$0.00	0.00%	\$5,400.00
Supplies	\$4,804.00	\$440.30	9.17%	\$4,363.70
Equipment Rental (Copier)	\$2,700.00	\$459.36	17.01%	\$2,240.64
Maintenance Contract	\$1,200.00	\$74.51	6.21%	\$1,125.49
Equipment	\$0.00	\$0.00	0.00%	\$0.00
Employee Training	\$1,700.00	\$0.00	0.00%	\$1,700.00
OAH Rule Services	\$4,500.00	\$0.00	0.00%	\$4,500.00
Other Operating Costs	\$930.00	\$240.00	25.81%	\$690.00
Total	\$1,000,000.00	\$136,009.33	13.60%	\$863,990.67



Minnesota

*Campaign Finance and
Public Disclosure Board*



Date: October 29, 2013

To: Board members

From: Gary Goldsmith, Executive Director

Telephone: 651-539-1190

The following recommendations list was taken from files and notes accumulated by staff over the past year. At the November meeting, I will explain each possible recommendation and the Board will provide direction as to which recommendations are accepted for incorporation into its 2014 legislative recommendations.

Technical Recommendations

Amend section 10A.01, subdivision 5, to change the threshold for disclosing securities owned in an associated business from "\$2,500 or more" to "more than \$2,500." This amendment continues the Board's efforts to standardize the financial disclosure thresholds in Chapter 10A.

Amend section 10A.02, subdivision 8 (a), to reflect the Board's current practice of preparing its legislative report of activities biennially instead of annually.

Amend section 10A.09, subdivision 1, to specify the deadline for judges and county commissioners to file their economic interest statements.

Amend section 10A.09, subdivision 5, to change the threshold for disclosing an option to buy real property from "a fair market value of \$50,000 or more" to "a fair market value of more than \$50,000." This amendment continues the Board's efforts to standardize the financial disclosure thresholds in Chapter 10A.

Repeal section 10A.09, subdivision 8, which requires the Board to use the contested case procedures in chapter 14 to suspend any public official who does not timely file an economic interest statement. The Board has never used this authority and it also is unclear how the Board would actually use the contested case procedures to suspend an official.

Amend section 10A.20, subdivision 2, to (1) exempt judicial and constitutional office candidates from the additional reporting requirements in general election years when their offices are not on the ballot; and (2) exempt constitutional office candidates from both pre-general-election reports when they lose in the primary.

Amend section 10A.20, subdivision 5, to require constitutional and legislative office candidates to file a 24-hour notice whenever they receive a contribution that is more than 50% of the election segment limit for the office. The statute currently requires 24-hour notice of contributions that are more than 50% of the election cycle limit.

Amend section 10A.255, subdivision 3, to require the Board to publish the adjusted spending limits on its website instead of in the State Register.

Attachment: Draft bill for technical changes

Minnesota Campaign Finance and Public Disclosure Board
Recommendations for Technical Changes to Minnesota Statutes Chapter 10A

10A.01 DEFINITIONS

Subd. 5. **Associated business.** "Associated business" means an association, corporation, partnership, limited liability company, limited liability partnership, or other organized legal entity from which the individual receives compensation in excess of \$50, except for actual and reasonable expenses, in any month as a director, officer, owner, member, partner, employer or employee, or whose securities the individual holds worth more than \$2,500 ~~or more~~ at fair market value.

10A.02 CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD

Subd. 8. **Duties.** (a)) The board must report at the close of each ~~fiscal year~~ biennium to the legislature, the governor, and the public concerning the action it has taken, the names, salaries, and duties of all individuals in its employ, and the money it has disbursed. The board must include and identify in its report any other reports it has made during the ~~fiscal year~~ biennium. It may indicate apparent abuses and offer legislative recommendations.

10A.09 STATEMENTS OF ECONOMIC INTEREST.

Subdivision 1. **Time for filing.** ~~Except for a candidate for elective office in the judicial branch, a~~ An individual must file a statement of economic interest with the board:

(1) within 60 days of accepting employment as a public official or a local official in a metropolitan governmental unit;

(2) within 60 days of assuming office as a district court judge, appeals court judge, supreme court justice, or county commissioner;

(3) within 14 days after filing an affidavit of candidacy or petition to appear on the ballot for an elective state constitutional or legislative office or an elective local office in a metropolitan governmental unit other than county commissioner;

~~(3)~~(4) in the case of a public official requiring the advice and consent of the senate, within 14 days after undertaking the duties of office; or

~~(4)~~(5) in the case of members of the Minnesota Racing Commission, the director of the Minnesota Racing Commission, chief of security, medical officer, inspector of pari-mutuels, and stewards employed or approved by the commission or persons who fulfill those duties under contract, within 60 days of accepting or assuming duties.

Subd. 5. **Form.** A statement of economic interest required by this section must be on a form prescribed by the board. The individual filing must provide the following information:

(1) name, address, occupation, and principal place of business;

(2) the name of each associated business and the nature of that association;

(3) a listing of all real property within the state, excluding homestead property, in which the individual holds: (i) a fee simple interest, a mortgage, a contract for deed as buyer or seller, or

an option to buy, whether direct or indirect, if the interest is valued in excess of \$2,500; or (ii) an option to buy, if the property has a fair market value of more than \$50,000 or more;

(4) a listing of all real property within the state in which a partnership of which the individual is a member holds: (i) a fee simple interest, a mortgage, a contract for deed as buyer or seller, or an option to buy, whether direct or indirect, if the individual's share of the partnership interest is valued in excess of \$2,500; or (ii) an option to buy, if the property has a fair market value of more than \$50,000 or more. A listing under clause (3) or (4) must indicate the street address and the municipality or the section, township, range and approximate acreage, whichever applies, and the county in which the property is located; and

(5) a listing of any investments, ownership, or interests in property connected with pari-mutuel horse racing in the United States and Canada, including a racehorse, in which the individual directly or indirectly holds a partial or full interest or an immediate family member holds a partial or full interest.

~~Subd. 8. **Failure to file; suspension.** A public official, except a member of the legislature or a constitutional officer, who is required to file a statement of economic interest and fails to do so by the prescribed deadline must be suspended without pay by the board in the manner prescribed in the contested case procedures in chapter 14.~~

10A.20 CAMPAIGN REPORTS

Subd. 2. **Time for filing.** (a) The reports must be filed with the board on or before January 31 of each year and additional reports must be filed as required and in accordance with paragraphs (b) to ~~(d)~~ (f).

(b) In each year in which the name of a candidate for legislative or district court judicial office is on the ballot, the report of the principal campaign committee must be filed 15 days before a primary election and ten days before a general election, seven days before a special primary election and seven days before a special general election, and ten days after a special election cycle.

(c) In each general election year, a political committee, a political fund, a state party committee, and a party unit established by all or a part of the party organization within a house of the legislature, ~~and the principal campaign committee of a candidate for constitutional or appellate court judicial office~~ must file reports on the following schedule:

(1) a first-quarter report covering the calendar year through March 31, which is due April 14;

(2) ~~in a year in which a primary election is held in August, a report covering the calendar year through May 31, which is due June 14;~~

(3) ~~in a year in which a primary election is held before August, a pre-general election report covering the calendar year through July 15, which is due July 29;~~

~~(4) a pre-primary-election report due 15 days before a primary election;~~

~~(5) (4) a pre-general-election report due 42 days before the general election; and~~

~~(6) (5) a pre-general-election report due ten days before a general election; and~~

~~(7) for a special election, a constitutional office candidate whose name is on the ballot must file reports seven days before a special primary and a special election, and ten days after a special election cycle.~~

(d) In each general election year, a party unit not included in paragraph (c) must file reports 15 days before a primary election and ten days before a general election.

(e) In each year in which the name of a candidate for constitutional or appellate court judicial office is on the ballot, the candidate's principal campaign committee must file reports on the following schedule:

(1) a first-quarter report covering the calendar year through March 31, which is due April 14;

(2) a report covering the calendar year through May 31, which is due June 14;

(3) a pre-primary-election report due 15 days before a primary election;

(4) a pre-general-election report due 42 days before the general election;

(5) a pre-general-election report due ten days before a general election; and

(6) for a special election, a constitutional office candidate whose name is on the ballot must file reports seven days before a special primary election, seven days before a special general election, and ten days after a special election cycle.

(f) Notwithstanding paragraphs (a) to ~~(e)~~, the principal campaign committee of a candidate whose name will not be on the general election ballot is not required to file the report due 42 days before the general election; the report due ten days before a general election, or the report due seven days before a special general election.

Subd. 5. Pre-election reports. (a) Any loan, contribution, or contributions:

(1) to a political committee or political fund from any one source totaling more than \$1,000;

(2) to the principal campaign committee of a candidate for an appellate court judicial office totaling more than \$2,000;

(3) to the principal campaign committee of a candidate for district court judge totaling more than \$400; or

(4) to the principal campaign committee of a candidate for constitutional office or for the legislature totaling more than 50 percent of the election ~~cycle~~ segment contribution limit for the office,

received between the last day covered in the last report before an election and the election must be reported to the board in the manner provided in paragraph (b).

10A.255 ADJUSTMENT BY CONSUMER PRICE INDEX.

Subd. 3. Publication of expenditure limit. By April 15 of each election year the board must publish ~~in the State Register~~ on its web site the expenditure limit for each office for that calendar year under section 10A.25 as adjusted by this section. The revisor of statutes must code the adjusted amounts in the next edition of Minnesota Statutes, section 10A.25, subdivision 2.

Campaign Finance and Public Disclosure Board

Possible legislative recommendations

A bill for an act related to campaign finance, providing for additional disclosure, making changes to chapter 10A, establishing civil penalties

10A.01

Subd. 16a. **Expressly advocating.** "Expressly advocating" means:

(1) that a communication clearly identifies a candidate and uses words or phrases of express advocacy; or

(2) that a communication when taken as a whole and with limited reference to external events, such as the proximity to the election, is susceptible of no reasonable interpretation other than as an appeal advocating the election or defeat of one or more clearly identified candidates.

10A.20

Subd. 3. **Contents of report.** The report required by this section must include each of the items listed in paragraphs (a) to (n) that are applicable to the filer. The board shall prescribe forms based on filer type indicating which of those items must be included on the filer's report.

(a) The report must disclose the amount of liquid assets on hand at the beginning of the reporting period.

(b) The report must disclose the name, address, and employer, or occupation if self-employed, of each individual or association that has made one or more contributions to the reporting entity, including the purchase of tickets for a fund-raising effort, that in aggregate within the year exceed \$200 for legislative or statewide candidates or ballot questions, together with the amount and date of each contribution, and the aggregate amount of contributions within the year from each source so disclosed. A donation in-kind must be disclosed at its fair market value. An approved expenditure must be listed as a donation in-kind. A donation in-kind is considered consumed in the reporting period in which it is received. The names of contributors must be listed in alphabetical order. Contributions from the same contributor must be listed under the same name. When a contribution received from a contributor in a reporting period is added to previously reported unitemized contributions from the same contributor and the aggregate exceeds the disclosure

threshold of this paragraph, the name, address, and employer, or occupation if self-employed, of the contributor must then be listed on the report.

(c) The report must disclose the sum of contributions to the reporting entity during the reporting period.

(d) The report must disclose each loan made or received by the reporting entity within the year in aggregate in excess of \$200, continuously reported until repaid or forgiven, together with the name, address, occupation, and principal place of business, if any, of the lender and any endorser and the date and amount of the loan. If a loan made to the principal campaign committee of a candidate is forgiven or is repaid by an entity other than that principal campaign committee, it must be reported as a contribution for the year in which the loan was made.

(e) The report must disclose each receipt over \$200 during the reporting period not otherwise listed under paragraphs (b) to (d).

(f) The report must disclose the sum of all receipts of the reporting entity during the reporting period.

(g) The report must disclose the name and address of each individual or association to whom aggregate expenditures, approved expenditures, ~~and~~ ballot question expenditures, and disbursements for electioneering communications have been made by or on behalf of the reporting entity within the year in excess of \$200, together with the amount, date, and purpose of each expenditure and the name and address of, and office sought by, each candidate on whose behalf the expenditure was made or, in the case of electioneering communications, each candidate identified positively in the communication, identification of the ballot question that the expenditure was intended to promote or defeat and an indication of whether the expenditure was to promote or to defeat the ballot question, and in the case of independent expenditures made in opposition to a candidate or electioneering communications in which a candidate is identified negatively, the candidate's name, address, and office sought. A reporting entity making an expenditure on behalf of more than one candidate for state or legislative office must allocate the expenditure among the candidates on a reasonable cost basis and report the allocation for each candidate.

(h) The report must disclose the sum of all expenditures made by or on behalf of the reporting entity during the reporting period.

(i) The report must disclose the amount and nature of an advance of credit incurred by the reporting entity, continuously reported until paid or forgiven. If an advance of credit incurred by the principal campaign committee of a candidate is forgiven by the creditor or paid by an entity other than that principal campaign committee, it must be reported as a donation in-kind for the year in which the advance of credit was made.

(j) The report must disclose the name and address of each political committee, political fund, principal campaign committee, or party unit to which contributions have been made that aggregate in excess of \$200 within the year and the amount and date of each contribution.

(k) The report must disclose the sum of all contributions made by the reporting entity during the reporting period.

(l) The report must disclose the name and address of each individual or association to whom noncampaign disbursements have been made that aggregate in excess of \$200 within the year by or on behalf of the reporting entity and the amount, date, and purpose of each noncampaign disbursement.

(m) The report must disclose the sum of all noncampaign disbursements made within the year by or on behalf of the reporting entity.

(n) The report must disclose the name and address of a nonprofit corporation that provides administrative assistance to a political committee or political fund as authorized by section 211B.15, subdivision 17, the type of administrative assistance provided, and the aggregate fair market value of each type of assistance provided to the political committee or political fund during the reporting period.

10A.201 Electioneering communications.

Subdivision 1. Electioneering communication. (a) “Electioneering communication” means a communication distributed by television, radio, satellite, or cable broadcasting system; by means of printed material, signs, or billboards; or through the use of telephone communications that

(1) refers to a clearly identified candidate;

(2) is made within

(i) 30 days before a primary election or special primary election for the office sought by the candidate, or

(ii) 60 days before a general election or special election for the office sought by the candidate; and

(3) is targeted to the relevant electorate,

(4) is made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, a candidate or a candidate's principal campaign committee or agent.

(b) If an electioneering communication clearly directs recipients to another communication, including a website, on-demand or streaming video, or similar communications, the electioneering communication consists of both the original electioneering communication and the communication

to which recipients are directed and the cost of both must be included when determining if disclosure is required under this section.

(c) Electioneering communication does not include:

(1) the publishing or broadcasting of news items or editorial comments by the news media;

(2) a communication that constitutes an approved expenditure or an independent expenditure;

(3) a communication by an association distributed only to the association's own members in a newsletter or similar publication in a form that is routinely sent to the association's members;

(4) any other communication specified in board rules or advisory opinions as being excluded from the definition of electioneering communications.

(5) a communication that:

(i) refers to a clearly identified candidate who is an incumbent member of the legislator or a constitutional officer,

(ii) refers to a clearly identified issue that is before the legislature in the form of an introduced bill, and

(iii) is made when the legislature is in session.

(d) A communication that meets the requirements of part (a) of this subdivision but is made with the authorization or expressed or implied consent of, or in cooperation or in concert with, or at the request or suggestion of a candidate, a candidate's principal campaign committee, or a candidate's agent is an approved expenditure.

Subd. 2. Targeted to the relevant electorate. For purposes of this section, a communication that refers to a clearly identified candidate is targeted to the relevant electorate if the communication is distributed to or can be received by more than 1,500 persons in the district the candidate seeks to represent, in the case of a candidate for the House of Representatives, Senate, or a district court judicial office or by more than 6,000 persons in the state, in the case of a candidate for constitutional office or appellate court judicial office.

Subd. 3. Disclosure of electioneering communications

(a) Electioneering communications made by a political committee, a party unit, or a principal campaign committee must be disclosed on the periodic reports of receipts and expenditures filed by the association on the schedule and in accordance with the terms of section 10A.20.

(b) An association other than a political committee, party unit, or principal campaign committee may register a political fund with the board and disclose its electioneering communications on the reports of receipts and expenditures filed by the political fund. If it does so, it must disclose its disbursements for electioneering communication on the schedule and in accordance with the terms of section 10A.20.

(c) An association that does not disclose its disbursements for electioneering communication under paragraphs (a) or (b) of this subdivision must disclose its electioneering communications according to the requirements of subdivision 6 of this section.

Subd. 4. Statement required for electioneering communications made by unregistered associations (a) Except for associations providing disclosure as specified in subdivision 3, paragraph (a) or (b), every person who makes a disbursement for the costs of producing or distributing electioneering communications that aggregate more than \$1,500 in a calendar year must, within 24 hours of each disbursement date, file with the board a disclosure statement containing the information described this subdivision.

(b). Each statement required to be filed under this section must contain the following information:

(1) the names of the association making the disbursement, of any person exercising direction or control over the activities of the association with respect to the disbursement, and of the custodian of the financial records of the association making the disbursement;

(2) the address of the person making the disbursement;

(3) the amount of each disbursement of more than \$200 during the period covered by the statement, a description of the purpose of the disbursement, and the identification of the person to whom the disbursement was made;

(4) the names of the candidates identified or to be identified in the communication;

(5) if the disbursements were paid out of a segregated bank account that consists of funds donated specifically for electioneering communications, the name and address of each

person who gave more than \$200 in aggregate to that account during the period beginning on the first day of the preceding calendar year and ending on the disclosure date;

(6) If the disbursements for electioneering communications were made using general treasury money of the association:

(i) an association that has paid more than \$5,000 in aggregate for electioneering communications during the calendar year must file with its disclosure statement, a written statement that includes the name, address, and amount attributable to each person that paid the association membership dues or fees, or made donations to the association that, in total, aggregate more than \$1,000 of the money used by the association for electioneering communications. The statement must also include the total amount of the disbursements for electioneering communications attributable to persons not subject to itemization under this clause. The statement must be certified as true by an officer of the donor association.

(ii) To determine the amount of the membership dues or fees, or donations made by a person to an association and attributable to the association's disbursements for electioneering communications, the association must separately pro-rate the total disbursements made for electioneering communications during the calendar year over all general treasury money received during the calendar year.

(iii) If the amount spent for electioneering communications exceeds the amount of general treasury money received by the association during that year:

(A) the electioneering communications must be attributed first to all receipts of general treasury money received during the calendar year in which the electioneering communications were made;

(B) any amount of current-year electioneering communications that exceeds the total of all receipts of general treasury money during the current calendar year must be pro-rated over all general treasury money received in the preceding calendar year;

(iii) if the allocation made in parts (i) and (ii) is insufficient to cover the subject electioneering communications, no further allocation is required.

(d) After a portion of the general treasury money received by an association from a person has been designated as the source of a disbursement for electioneering communications, that portion of the association's general treasury money received from that person may not be designated as the source of any other disbursement for electioneering communications or as the source for any contribution to an independent expenditure political committee or fund.

Subd. 5. Disclosure date. (a) For purposes of this section, the term "disclosure date" means the earlier of

(1) the first date during any calendar year by which a person has made disbursements for electioneering communications that aggregate more than \$1,500; or

(2) any other date during the same calendar year by which a person has made additional disbursements for electioneering communications that aggregate more than \$1,500 since the most recent disclosure date for the calendar year.

(b) a disbursement is made for electioneering communication if

(1) at the time the disbursement was made the association knew or intended that the communication would meet the requirements for an electioneering communication under this section, or

(2) regardless of the knowledge or intent of the association at the time the disbursement was made, the resulting communication meets the requirements for an electioneering communication under this section.

Subd. 6. Contracts to disburse. For purposes of this section, a person shall be treated as having made a disbursement if the person has entered into an obligation to make the disbursement.

Subd. 7 **Statement of attribution.** (a) An electioneering communication must include a statement of attribution.

(1) For communications distributed by printed material, signs, and billboards, the statement must say, in conspicuous letters: "Paid for by[association name]....[address]".

(2) for communications distributed by television, radio, satellite, or cable broadcasting system, the statement must be included at the end of the communication and must orally state at a volume and speed that a person of ordinary hearing can comprehend: "The preceding communication was paid for by the[association name].... ."

(3) for communications distributed by telephone communication, the statement must precede the communication and must orally state at a volume and speed that a person of ordinary hearing can comprehend: "The following communication is paid for by the[association name].... ."

(b) If the communication is paid for by an association registered with the board, the statement of attribution must use the association's name as it is registered with the board. If the communication is paid for by an association not registered with the board, the statement of attribution must use the association's name as it is disclosed to the board on the association's disclosure statement associated with the communication.

Subd. 8. Failure to file; penalty.

Subd. 8. **Failure to file; penalty.** (a) If a person fails to file a statement required by this section by the date the statement is due, the board may impose a late filing fee of \$25 per day, not to exceed \$1,000, commencing the day after the report was due.

(b) The board must send notice by certified mail to a person who fails to file a statement within ten business days after the statement was due informing the person that the person may be subject to a civil penalty for failure to file the statement. A person who fails to file the statement within seven days after the certified mail notice was sent by the board is subject to a civil penalty imposed by the board of up to \$1,000.

(c) An association that provides disclosure under section 10A.20 rather than under this section is subject to the late filing fee and civil penalty provisions of section 10A.20 and is not subject to the penalties provided in this subdivision.

(d) An association that makes electioneering communications under this section and fails to provide the statement required by subdivision 4, paragraph (b), clause (6), within the time specified is subject to an additional civil penalty of up to four times the amount of the electioneering communications disbursements, but not to exceed \$25,000, except when the violation was intentional.

10A.25

Subd. 3a. Independent expenditures and electioneering communications. The principal campaign committee of a candidate must not make independent expenditures or disbursements for electioneering communications.

10A.27

Subd. 15. **Contributions or use of general treasury money.** (a) An association may, if not prohibited by other law, contribute its general treasury money to an independent expenditure or ballot question political committee or fund, including its own independent expenditure or ballot question political committee or fund, without complying with subdivision 13.

(b) Before the day when the recipient committee or fund's next report must be filed with the board under section 10A.20, subdivision 2 or 5, an association that has contributed more than \$5,000 in aggregate to independent expenditure political committees or funds during the calendar year or has contributed more than \$5,000 in aggregate to ballot question political committees or funds during the calendar year must provide in writing to the recipient's treasurer a statement that includes the name, address, and amount attributable to each person that paid the association dues or fees, or made donations to the association that, in total, aggregate more than \$1,000 of the contribution from the association to the independent expenditure or ballot question political committee or fund. The statement must also include the total amount of the contribution attributable to persons not subject to itemization under this section. The statement must be certified as true by an officer of the donor association.

(~~b~~ c) To determine the amount of membership dues or fees, or donations made by a person to an association and attributable to the association's contribution to the independent expenditure or ballot question political committee or fund, the donor association must: separately pro-rate the total independent expenditures and ballot question expenditures made during the calendar year over all general treasury money received during the calendar year.

(d) If the amount contributed to independent expenditure and ballot question political committees or funds in a calendar year exceeds the amount of general treasury money received by the association during that year:

(i) the contributions must be attributed first to all receipts of general treasury money received during the calendar year in which the contributions were made;

(ii) any amount of current-year contributions that exceeds the total of all receipts of general treasury money during the current calendar year must be pro-rated over all general treasury money received in the preceding calendar year;

(iii) if the allocation made in parts (i) and (ii) is insufficient to cover the subject independent expenditures and ballot question expenditures no further allocation is required.

~~(1) apply a pro rata calculation to all unrestricted dues, fees, and contributions received by the donor association in the calendar year; or~~

~~(2) as provided in paragraph (c), identify the specific individuals or associations whose dues, fees, or contributions are included in the contribution to the independent expenditure political committee or fund.~~

~~(c) Dues, fees, or contributions from an individual or association must be identified in a contribution to an independent expenditure political committee or fund under paragraph (b), clause (2), if:~~

~~(1) the individual or association has specifically authorized the donor association to use the individual's or association's dues, fees, or contributions for this purpose; or~~

~~(2) if the individual's or association's dues, fees, or contributions to the donor association are unrestricted and the donor association designates them as the source of the subject contribution to the independent expenditure political committee or fund.~~

(e) After a portion of the general treasury money received by an association from a person has been designated as the source of a contribution to an independent expenditure or ballot question political committee or fund, that portion of the association's general treasury money received from that person may not be designated as the source of any other contribution to an independent expenditure or ballot question political committee or fund or as the source of funds for a disbursement for electioneering communications made by that association.

State of Minnesota
Campaign Finance & Public Disclosure Board
Suite 190, Centennial Building. 658 Cedar Street. St. Paul, MN55155-1603

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

RE: The Purchase of Research and Polling Data Services

ADVISORY OPINION 436

SUMMARY

Purchasing research and polling services as a defined package for a flat annual fee does not create an in-kind contribution to other committees who purchase the same services at the same flat annual fee. Joint purchases of research and polling services by committees that have a bona fide use for the services are not an in-kind contribution as long as each committee pays an equal or proportionate share of the cost of the service.

FACTS

As the attorney for a company (the Vendor) that provides issue and candidate related research and opinion polling services in Minnesota, you ask the Board for an advisory opinion. The Vendor requests the opinion in order to verify that its proposed pricing models for its products will not create in-kind contributions between customers who buy the same product or service. Your request is based on hypothetical facts that you have provided which are, in relevant part, as follows:

1. The Vendor is a corporation that operates a commercial research and opinion polling service that provides its customers with information which helps their election related activities in Minnesota.
2. The Vendor's customers include candidate committees, political party units, political committees and funds, and independent expenditure committees and funds registered with the Board.
3. The Vendor is considering a new pricing model for its services in 2014. Under this model customers will have the option to purchase a defined package of research and opinion polling services for a flat annual fee. The Vendor will set the amount of the annual fee and require customers to pay the fee at the beginning of the year.
4. If the flat annual fee pricing model is implemented the amount of the fee will be set at a level the Vendor reasonably believes will result in total flat fee revenue that exceeds the total costs (including overhead) to produce the services provided.
5. If more customers than expected wish to purchase the flat annual fee package the Vendor may decide to either lower the flat fee, or increase the services provided in the package.

6. All customers who purchase services from the Vendor using the flat annual fee pricing model will receive the same package of products and services. Under no circumstances will the Vendor provide discounted rates, benefits, or preferential treatment to any customer that purchases services under the flat annual fee model.
7. The flat annual fee package of products and services will be delivered to customers over the course of the year. As topics of interest to customers will likely change over the course of an election year the Vendor will periodically solicit input from customers on the issues of interest to them. The Vendor will retain discretion over the specific topics and subjects of the work it provides under the flat annual fee model. Through this process the Vendor hopes to ensure that customers have a bona fide use for the information purchased.
8. Because expenditures made by customers registered with the Board are disclosed on periodic Reports of Receipts and Expenditures, it may be that customers will become aware of other customers who have purchased the Vendor's products. However, the Vendor business model is to maintain the confidentiality of its customers' identities.
9. The Vendor has in place policies and procedures that prohibit its customers from discussing their election related plans, including how the customer will use polling and research information, with employees of the Vendor.
10. In addition to the flat annual fee package of services, the Vendor expects to sell additional discrete research and polling projects in response to specific requests received from customers. The Vendor will charge either an hourly rate or a flat fee for services not provided as part of the flat annual fee package. Both the hourly rate and the flat fee will reflect a rate the Vendor reasonably believes will exceed the cost to produce the work requested.
11. If two or more customers jointly ask the Vendor to work on a discrete research or polling project, the Vendor will charge the same hourly rate or flat fee as it would if only one customer were purchasing the product. The cost of the project will be divided between the customers so that each customer pays an equal and proportionate share of the total project cost.
12. The Vendor is aware of Advisory Opinion 410, issued by the Board in September of 2010. The Vendor is concerned that the answer the Board provided in response to question 9(b) may mean that customers who purchase research or polling services under either of the pricing models described in the facts of this advisory opinion could be viewed as making in-kind contributions to other customers who purchase the same service or product.

Background

An advisory opinion may be requested only to guide the requestor in actions it is considering taking. In this case, the requestor is a vendor making a decision on how to market and set prices for its services. The Board recognizes that it has no authority to regulate the Vendor's decisions on these matters. However, the Vendor recognizes that its pricing models have the potential to automatically result in transactions that would be recognized, and may be prohibited, under Chapter 10A. Thus, the application of Chapter 10A will have a bearing on the Vendor's decisions, even though any violation resulting from the described transactions would be a violation for the Vendor's customers.

The requestor's impetus to ask for this advisory opinion is found in its reading of Advisory Opinion 410; in particular the Board's answer to question 9 (b). Advisory Opinion 410 was issued in response to a series of questions from an association that planned to register as an independent expenditure political committee (IEPC) with the Board. Most of the questions asked in the opinion sought to determine what communications and actions an IEPC may make without jeopardizing the independence of expenditures later made by the IEPC to support or oppose a candidate. The text of the question 9 (b) and the opinion offered by the Board in Advisory Opinion 410 are as follows:

Question 9(b) The IEPC hires a polling firm to conduct a poll and the IEPC shares the cost of polling activities with a political party or legislative caucus. The results of the poll are used by the IEPC and the political party or legislative caucus to make independent expenditures.

Opinion: Legislative caucuses are party units, so the question as stated applies to all party units. While the scenario as presented would not destroy the independence of resulting independent expenditures, it presents a different potential problem. Independent expenditure political committees or funds are not permitted to make contributions to party units. The Board believes that polling results are not diminished in value by being shared between two entities, the value of the results to each entity is the same as either would have had to pay for the results on its own. Therefore, sharing costs of a poll as described would result in a prohibited contribution from the IEPC to the party unit.

The question in Advisory Opinion 410, like the question in this opinion, relates to the joint purchase of services by two associations registered under Chapter 10A. To the extent that the Board's answer in Advisory Opinion 410, question 9 (b), provides that *any* joint purchase between an IEPC and a political party unit automatically results in a prohibited in-kind contribution, that conclusion is clarified by this opinion, and section 9(b) of Advisory Opinion 410 is limited to joint purchases of polling data when the IEPC has no bona fide need for the polling data acquired through the joint purchase.

Question One

If a registered committee purchases a defined package of research and opinion polling services for a flat annual fee, will that committee have made an in-kind contribution to any other registered committee that purchases the same package of services for the same flat annual fee?

Opinion One

No. The amount of the flat annual fee will be based on the Vendor's calculation of the expected total fixed and variable costs for providing the package of services divided by the estimated number of customers who will purchase the service. The Vendor may, at its discretion, lower the flat annual fee if more customers than expected purchase the services. But the customers of the service are not in control of the price set by the Vendor, and therefore, have no control over whether their use of the flat annual fee package will result in a lower cost to other customers.

Further, for an in-kind contribution to occur there must be a decision by the contributor to transfer goods or services to the recipient committee. An in-kind contribution does not occur if an action has the inadvertent result of reducing the cost of goods or services to another committee. The facts of this request provide no basis for the Board to conclude that the purchase of services for a flat annual fee is anything more than a commercial transaction between the customer and the Vendor.

In reaching this conclusion, the Board assumes that there is no collusion between the Vendors customers for the purpose of reducing the cost of the Vendor's services for a particular customer.

Question Two

If two or more registered committees or funds evenly share the cost of purchasing a specific set of research or polling services, will the registered committees or funds have made in-kind contributions to each other equal in value to the amount each committee or fund saved by not purchasing the services alone?

Opinion Two

No, as long as all parties that are a part of the joint purchase have a bone fide use for the services purchased and the share each party pays is equivalent to the proportionate benefit each party expects to receive from the service. Registered committees and funds, like any other consumer, try to derive the best value possible for their money. As long as all of the parties in a joint purchase of services have a legitimate use for the services, and the joint purchase is a way to buy needed services at a reduced cost, then the joint purchase is not an in-kind contribution.

If, however, a participant in a joint purchase has no need for the services acquired, then the purpose of the joint purchase changes. A party to a joint purchase of services that has no bona fide use for the services is partially subsidizing the services used by the other participants in the purchase. In this scenario the cost paid by the party that had no use for the service is an in-kind contribution to any registered committee that received the service through the joint purchase. An in-kind contribution is not necessarily prohibited, but as pointed out by Advisory Opinion 410, an in-kind contribution between an IEPC and any other type of registered committee, is a violation of Chapter 10A.

An in-kind contribution may also occur if the cost paid by a party to a joint purchase is significantly disproportionate to the parties' use of the service. In such a case, the parties must allocate the cost of the service in proportion to the benefit they received from it.

The requestor states that the Vendor will try to ensure that customers have a bona fide use of the services provided, and that customers pay an equal and proportionate share of joint purchases. However, the Vendor's policy of prohibiting its employees from discussing with a customer the customer's intended use of research and polling information seems to preclude the Vendor from being able to determine if a bona fide use exists or that joint payments are proportionate to the parties' expected use. If evidence is provided to the Board that indicates that a joint purchase was used as a means to make an unreported in-kind contribution, the Board may investigate to determine if all parties to the purchase had a bona fide need for the information acquired and that the amount paid in a joint purchase was appropriate.

Issued: November 5, 2013

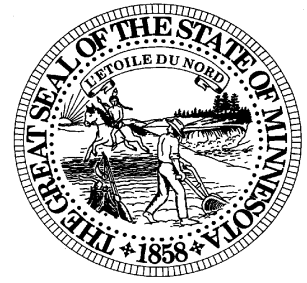
Deanna Wiener, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes

Minn. Stat. § Subd. 13. Donation in kind. "Donation in kind" means anything of value that is given, other than money or negotiable instruments. An approved expenditure is a donation in kind.

Minnesota

*Campaign Finance and
Public Disclosure Board*



Date: October 29, 2013

To: Board members

From: Gary Goldsmith, Executive Director

Telephone: 651-539-1190

Re: Advisory Opinion 437

This request is nonpublic data. The requester is an attorney representing a candidate who has been asked to participate in fundraising the activities of an independent expenditure political committee that might wish to make independent expenditures to influence the election of that same candidate. The version of the opinion attached to this memo is the generic public version. The nonpublic version is the same except that it identifies the attorney requester.

As members recognize, the topic of independent expenditures is of great interest to both the regulated communities and to the public because independent spending is moving to a position of predominance in some elections. In last year's state Senate elections we saw independent spending exceed candidate spending, even in a race where the candidates were not bound by spending limits.

The Board has previously addressed the question of independent expenditures where the same political consultant is retained by both an association intending to make independent expenditures and a candidate who will benefit from those independent expenditures. In Advisory Opinion 400, the Board concluded essentially that an individual could not provide campaign consulting services to both a candidate and an association intending to make independent expenditures to affect that same candidate's election. The high wall of separation required meant that the consultant would have to effectively maintain two separate operating structures; one for candidate work and one for independent expenditure work.

The question of communications and conduct that could destroy the independence of an expenditure was also addressed in Advisory Opinion 410. That advisory opinion examined specific fact scenarios, but did not provide general guidance about the conduct and communications that could destroy the independence of an independent expenditure under the section 10A.01 independent expenditure definition.

The question of a candidate's direct participation in fundraising for an independent expenditure political committee that could use some of the money raised to make independent expenditures on behalf of that same candidate has not previously been considered by the Board. This request provides a means by which the Board can examine each of the types of conduct or communication that the independent expenditure definition says that must be avoided in order to preserve the independence of an expenditure.

The draft prepared by staff for Board consideration maintains the Board's position that certain relationships between candidates and independent expenditure spenders may exist without destroying the independence of an eventual expenditure related to that candidate. The draft

also maintains the Board's position that the prohibition on conduct or communications related to an independent expenditure requires a high degree of separation between the association and the candidate. The draft takes the position that on the limited and very narrow facts presented in the request, the required separation is maintained. However, it also acknowledges that with different facts a different result might be reached.

Attachments:

Request letter

Draft Advisory Opinion 437 – public version

State of Minnesota
Campaign Finance & Public Disclosure Board
Suite 190, Centennial Building. 658 Cedar Street. St. Paul, MN 55155-1603

THIS ADVISORY OPINION IS PUBLIC DATA

**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)**

RE: Candidate fundraising for independent expenditure political committee or fund

ADVISORY OPINION 437

SUMMARY

Under the specific facts presented, assistance by a candidate in the fundraising efforts of an independent expenditure political committee will not destroy the independence of an expenditure later made by the independent expenditure political committee to influence the candidate's election. However, the statutes prohibit virtually all candidate involvement at any step of the process of making an independent expenditure. As a result, even a slight deviation from the hypothetical facts of this opinion could result in the resulting expenditure being a contribution to the candidate.

FACTS

As the attorney for a Minnesota candidate, as defined in Minnesota Statutes Chapter 10A, (the Candidate), you ask the Campaign Finance and Public Disclosure Board for an advisory opinion. Your request is based on the following assumed facts, which you have provided:

1. The candidate has been approached by a group of individuals who intend to form an independent expenditure political committee (IEPC). The group intends to register the IEPC with the Board as required by statute. The IEPC intends to accept unlimited contributions from individuals and corporations. It also intends to make expenditures expressly advocating the election or defeat of candidates for state office.
2. Neither the Candidate nor the Candidate's principal campaign committee or any agent of the Candidate has any knowledge regarding the content, timing, or volume of any of the IEPC's expenditures. The Candidate, the committee, and the Candidate's agents also have no knowledge about the location, mode, or intended audience of the IEPC's expenditures (e.g., choice between online advertisements and television advertisement or choice between a message targeted at Republican-leaning voters and a message targeted at Independent-leaning voters).
3. The group has asked the Candidate to assist the IEPC with fundraising, both by directly

soliciting contributions for the IEPC and by appearing as a speaker at the IEPC's fundraising events.

Assumptions;

For the purposes of this opinion, the Board makes the following further assumptions:

1. In addition to the stated facts, the Board assumes that the neither the Candidate's principal campaign committee nor any agent of the Candidate are involved in any way that might defeat the independence of the subject expenditure. On the basis of that assumption, this opinion examines only the actions of the Candidate. Readers seeking guidance from this opinion should recognize that although this opinion discusses only conduct by a candidate, that same conduct by the candidate's principal campaign committee or agent would have the same effect as if engaged in by the candidate.
2. The Board also assumes that the described IEPC intends to make independent expenditures for multiple candidates, that the Candidate has no knowledge or information as to the identities of the candidates who will be the subjects of the IEPC's independent expenditures, and that there is nothing to suggest to the Candidate that the Candidate will necessarily be a beneficiary of those expenditures.
3. The Board finally assumes that the fundraising is not undertaken in such a way that the fundraising itself would promote the Candidate's nomination or election. On the basis of this assumption, the Board does not address situations in which fundraising efforts undertaken by an association could constitute contributions to a candidate assisting in the fundraising.

Based on the above facts, you ask for an advisory opinion addressing the following questions:

Question One

May the candidate solicit unlimited contributions from individuals and corporations to the IEPC without giving "consent, authorization, or cooperation" for any subsequent expenditures in support of the candidate?

Opinion

This question requires the Board to examine the definition of independent expenditure, which is only partly quoted in the question posed by the Candidate. The Candidate recognizes that certain actions by the Candidate could destroy the independence of an expenditure that would otherwise be characterized as an independent expenditure.

The question confirms that the Candidate also recognizes that an independent expenditure political committee may accept unlimited contributions from both individuals and corporations, subject to limited disclosure provisions. The Candidate, on the other hand, is subject to strict limits on the amount that the Candidate may accept from an individual donor and is prohibited from accepting contributions from corporations.

An independent expenditure is a special type of expenditure in Minnesota law because it can be made without financial limits and it may be made using any source of funding, including corporate money. Additionally, an independent expenditure does not constitute a contribution to the candidate who may benefit from the expenditure. Thus, it provides a means of supporting candidates without being bound by the financial limits applicable to contributions to candidates.

An independent expenditure is defined in terms of conduct that is *not* associated with the expenditure. The definition is as follows:

"Independent expenditure" means an expenditure expressly advocating the election or defeat of a clearly identified candidate, if the expenditure is made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, any candidate or any candidate's principal campaign committee or agent.

Minnesota Statutes section 10A.01, subdivision 18.

The facts of this matter specify that the expenditure made by the IEPC will expressly advocate for the election or defeat of a clearly identified candidate, meeting the requirement for content of a message that may be an independent expenditure. The question presented is whether an expenditure for a communication that advocates for the election of the Candidate or against the election of the Candidate's opponent can be an independent expenditure in view of the Candidate's participation in fundraising for the IEPC.

Under Minnesota law, an independent expenditure is not merely a financial transaction. An independent expenditure includes the decision to spend money and the financial transactions making the payment. But it also includes decisions about content of the resulting communication, timing of the communication's distribution, and decisions about the audience to whom the communication will be distributed. Finally, an independent expenditure includes the communication that results from the spending. This final conclusion is mandated by the definition of independent expenditure, which says that an independent expenditure is an expenditure "expressly advocating the election or defeat of a clearly identified candidate." Only the communication itself, which results from decisions leading up to its creation and distribution, can advocate for anything.

The conclusion that the independent expenditure consists of the communication itself as well as the processes and decisions involved in creating and distributing the communication is further supported by the independent expenditure disclaimer requirement of Minnesota Statutes section 10A. 17, subdivision 4, which requires that persons making independent expenditures must provide specified disclosure on all literature or advertisements published as independent expenditures.

To assist in examining whether an expenditure remains independent of a candidate, it is helpful to break down the possible types of action or communication that could defeat its independence. Examined in this way, the statute says that an expenditure is not an independent expenditure if the expenditure is made:

with the express consent of the candidate,
with the implied consent of the candidate,

with the authorization of the candidate,
with the cooperation of the candidate,
in concert with the candidate,
at the request of the candidate, or
at the suggestion of the candidate.

By using a comprehensive list of activities and relationships that will defeat the independence of an expenditure, the legislature has conveyed its intention to require a high degree of separation between independent expenditure spenders and affected candidates. The Board has applied this legislative intent in previous advisory opinions and enforcement actions related to protecting the independence of independent expenditures.

The Board assumes that the legislature, through the use of this comprehensive list of prohibited communications and relationships, intended to require the highest degree of separation between candidates and independent expenditure spenders that is constitutionally permitted. In fact, when the statute was enacted it included a clause that completely precluded recognition of independent expenditures made by political parties once they had candidates on the ballot. While that clause was stricken by the courts as unconstitutional, it is still instructive with respect to the concern the legislature had about maintaining separation between candidates and associations that could raise and spend money without statutory limits to influence the elections of those same candidates.

The facts of the request suggest a close relationship between the Candidate and the IEPC. A candidate will not be approached by an independent expenditure political committee to engage in fundraising unless the candidate's expressed values and goals are consistent with those of the political committee. Conversely, a candidate would not consider engaging in fundraising for a political committee whose values and goals were contrary to those of the candidate. It is this very alignment of values and goals that makes it possible, perhaps likely, that the IEPC would decide to engage in independent expenditure communications to affect the Candidate's election.

With the above analysis in mind, the Board considers whether the scenario posed by the Candidate involves any of the conducts or relationships that would defeat the independence of an IEPC expenditure affecting the Candidate's election.

Express consent or authorization

Express consent and authorization are similar in that they each require a specific manifestation of a candidate's approval of the association's making expenditures to affect the candidate's election. That approval may be of a specific expenditure or of the general proposition that the association will make expenditures to affect the candidate's election.

Whether an action is "consent" or "authorization" may depend on whether the association approached the candidate and asked about doing independent expenditures, in which consent might result, or whether the candidate somehow authorized expenditures without being asked or without a two-way communication taking place. The Board concludes that the use of both "consent" and "authorization" was part of the legislature's broad approach in which it intended to preclude any communication about independent expenditures between the spender and the affected candidate.

Neither express consent nor authorization can be implied by conduct. Each requires an affirmative manifestation of approval for associations making expenditures affecting the candidate's election. Under the facts of this opinion, there is no act or statement by the Candidate affirmatively consenting to or authorizing the IEPC to make expenditures on behalf of the Candidate.

Request or suggestion

A request that an association make expenditures to support a candidate is slightly different than a suggestion that the association do the same thing. The inclusion of both concepts as acts that destroy the independence of an expenditure is another example of the legislature's intent to prohibit all expenditure-related communications between a candidate and a potential independent expenditure spender. For the purposes of this opinion, it is sufficient to recognize that a request or suggestion cannot be implied. Like express consent or authorization, a specific affirmative action must be taken by the candidate to constitute conduct that defeats the independence of the expenditure. Under the facts of this opinion, there is no such conduct.

In concert with

When one works in concert with another, they are working together toward a mutual goal or endpoint. The phrase requires some joint or coordinated effort to reach the mutually sought result.

When considering the question of working in concert with respect to independent expenditure communications, a more specific joint effort is required than that specified in the facts of this opinion. The facts establish that the IEPC wishes to make independent expenditures and that the Candidate may assist the IEPC in fundraising for that purpose. The Board has assumed that the independent expenditures will support the mutual goals of the IEPC and the Candidate. However supporting the political goals of an association, even by assisting the association in raising money to reach those goals through the making of independent expenditures is insufficient to constitute working in concert with the association on any specific independent expenditure communication or group of communications.

Implied consent

Unlike express consent, implied consent does not require any affirmative assertion of consent. Implied consent may be demonstrated solely through conduct. Under the facts of this opinion, the political committee for which the Candidate would raise money is a political committee formed expressly to make independent expenditures. It follows that the Candidate's participation in fundraising for that purpose constitutes implied consent for the IEPC's overall mission and approach, that is advocating for candidates through independent expenditure communications.

However, the implied consent that will defeat the independence of an expenditure must be implied consent for independent expenditure communications related to the candidate giving the consent; not simply implied consent that the association may make independent expenditures. Under the facts of this opinion, there is no indication of whether the IEPC will even make independent expenditures supporting the Candidate. A mere hope, or even the likelihood, that an association will make independent expenditures supporting a candidate is not sufficient for the candidate's participation in fundraising to constitute implied consent for such an independent expenditure should one eventually occur.

If a real life scenario differs from the limited facts presented in this opinion, the Board's conclusion might be different. For example, an independent expenditure political committee that includes a candidate's name implies that it exists to make independent expenditures for that candidate. That candidate's participation in fundraising would, at a minimum, constitute implied consent for any resulting expenditures.

Similarly, if a candidate understands or has reason to believe that the activities of an independent expenditure political committee are directed toward expenditures for that candidate, then that candidate's participation in fundraising for the furtherance of those activities could constitute implied consent for the resulting expenditures.

In cooperation with

Like implied consent, the question of whether a candidate acts in cooperation with an association in the association's independent expenditure communications is a question of fact that will usually require a case-by-case analysis.

Acting in cooperation with an association developing independent expenditure communications is different than acting in concert. As noted above, acting in concert requires some level of coordination or joint effort to reach a mutual goal or endpoint. On the other hand, a candidate may cooperate with a political committee in the development of communications intended to be independent expenditures without coordinating the association's efforts with those of the candidate's principal campaign committee. Acting in cooperation requires some level of participation by the candidate in at least one of the various processes or decisions that are undertaken to make an independent expenditure.

Under the facts presented, the Candidate's general cooperation with fundraising for the IEPC is not in the furtherance of any particular expenditure and, thus, does not meet the threshold for cooperation that would defeat the independence of an expenditure.

If a real life scenario differs from the limited facts presented in this opinion, the Board's conclusion might be different. For example, if a candidate understands or has reason to believe that the activities of an independent expenditure political committee are directed toward expenditures for that candidate, then that candidate's participation in fundraising for the furtherance of those activities could constitute cooperation in making the resulting expenditures.

When cooperation is in question a case-by-case factual analysis will usually be required.

Conclusion

Under the facts and assumptions on which this opinion is based, the actions of the Candidate in fundraising for the IEPC would not destroy the independence of any expenditure the IEPC decides to make affecting the Candidate's election. However, certain actions can only be evaluated based on real-world events on a case-by-case basis. Thus, this opinion is narrowly limited to the facts and assumptions contained herein.

Questions Two and Three

May the Candidate participate in fundraising events where the IEPC solicits unlimited contributions from individuals and corporations?

May the Candidate promote the IEPC to the Candidate's supporters without directly soliciting funds?

Opinion

The analysis in response to Question One is applicable to these questions. If none of the factors that would defeat the independence of an expenditure exists, the expenditure made with funds raised at a fundraising event in which the Candidate participates or through the promotion of the IEPC to the Candidate's supporters would not destroy the independence of a subsequent expenditure made to influence the election of the candidate.

Questions Four and Five

Would it lessen the risk of a coordinated expenditure if the Candidate and the Candidate's campaign took the following actions?

- (a) Avoid hiring employees, vendors, or consultants who have knowledge or decision-making authority regarding the IEPC's strategies or expenditures.
- (b) Avoid sharing any non-public information with the IEPC about the campaign's plans, strategies, or needs.
- (c) Avoid conversations with any person making decisions for the IEPC about the IEPC's proposed expenditures or the campaign's plans.

Are there any other actions the candidate could take to lessen the risk of a coordinated expenditure with the IEPC?

Opinion

The opinions expressed in the previous sections assumed that there were no relationships other than the Candidate's fundraising efforts that would affect the characterization of the IEPC's expenditures. The previous questions related solely to the Candidate's fundraising activities on behalf of the IEPC. Questions Four and Five introduce an entirely different category of relationships and conducts that could destroy the independence of an IEPC expenditure affecting the Candidate's election.

The Board has addressed the question of shared contractors in previous advisory opinions and, while advisory opinions are not binding and do not constitute any sort of precedent, the Board finds the advice given previously to be applicable here. In Advisory Opinion 410, the Board recognized the danger of shared consultants and determined that a consultant working for both an independent expenditure political committee and a candidate would have to create two essentially separate companies. The Board recognized that it is not possible for one individual to mentally compartmentalize two related campaigns without one affecting the other.

To the extent that it remains unclear, the Board concludes that a candidate's hiring or retaining of employees, vendors, or consultants who have knowledge or decision-making authority regarding the strategies or expenditures of an independent expenditure political committee or fund results in coordination that defeats the independence of any expenditure made by the

independent expenditure political committee or fund to affect the candidate's election. Such relationships should be strictly avoided.

If a consultant or vendor has established separate independent expenditure and candidate divisions with the required level of separation, the candidate could retain the candidate division without destroying the independence of any expenditure on which the independent expenditure division worked. Advisory Opinion 410 discusses the level of separation required and reflects the opinion of the Board with respect to the issue raised in question four (a).

The Candidate also asks whether the principal campaign committee should avoid sharing any non-public information with the IEPC about the campaign's plans, strategies, or needs. Without more specific facts, the Board cannot issue an absolute opinion. It is possible that there are situations when sharing such information would not destroy the independence of an eventual IEPC on behalf of the Candidate. However, it is more likely that sharing such information would constitute coordination, defeating the independence of any eventual IEPC expenditures. It is also possible that sharing such information could constitute a request by the Candidate that the IEPC make independent expenditures on the Candidate's behalf.

The Candidate asks if the Candidate should avoid conversations with any person making decisions for the IEPC about the IEPC's proposed expenditures or the campaign's plans. Clearly such conversations are to be avoided if the independence of any eventual IEPC expenditure is to be maintained. Such conversations have the potential of constituting express or implied consent, request, or authorization.

Finally, the Candidate asks if there are other steps the Candidate should take to maintain the independence of any IEPC expenditures.

This opinion discusses in detail the types of actions or communications involving candidates and political committees or funds that would could defeat the independence of a political committee or fund expenditure. Although this opinion is limited to possible expenditures by an independent expenditure political committee, these types of actions and communications can destroy the independence of an expenditure made by any type of entity engaged in communications to influence the nomination or election of candidates.

The list of actions and communications that will defeat the independence of an expenditure is comprehensive. The Board has concluded that the legislature intended the statute to be applied broadly so as to prohibit all involvement of candidates in any part of the process of an association's making independent expenditures. As candidates and associations seek to determine the boundaries of interactions that they may have without defeating the independence of an expenditure, this interpretation and the guidance of this opinion should be considered.

Dated: November 5, 2013

Deanna Wiener, Chair
Campaign Finance and Public Disclosure Board