

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

.....  
**June 3, 2020**

**Meeting conducted remotely though Webex due to COVID-19 pandemic**

.....

**MINUTES**

The meeting was called to order by Vice Chair Haugen.

Members present: Haugen, Leppik, Rosen, Swanson

Members absent: Two positions currently are vacant.

Others present: Sigurdson, Engelhardt, Olson, Pope, staff; Hartshorn, counsel

**MINUTES** (May 6, 2020)

After discussion, the following motion was made:

Member Leppik's motion: To approve the May 6, 2020, minutes as drafted.

Vote on motion: A roll call vote was taken. All members voted in the affirmative.

**CHAIR'S REPORT**

**A. 2020 meeting schedule**

The next Board meeting is scheduled for 10:30 a.m. on Wednesday, July 15, 2020.

**EXECUTIVE DIRECTOR REPORT**

Mr. Sigurdson presented members with a memorandum regarding this matter that is attached to and made a part of these minutes. Mr. Sigurdson told members that because the legislature had not confirmed the appointments of Members Moilanen and Flynn before adjourning sine die on May 18, 2020, those appointments had lapsed. Mr. Sigurdson said that the Governor's office had posted these two positions for applications and hoped to fill them before the July meeting. Mr. Sigurdson said that the Board's ability to have a quorum was further complicated by the fact that the terms of Members Leppik and Swanson had expired on January 6, 2020. Mr. Sigurdson stated that Members Leppik and Swanson could serve until July 1, 2020. After that date, they could no longer serve and their positions would be vacant until the Governor filled them. Mr. Sigurdson said that he had been in contact with the Governor's office and that they were aware of the urgent need to move forward with Board appointments.

Mr. Sigurdson then told members that staff had been busy with the June reports due in the lobbyist and campaign finance programs and with the tasks associated with the candidate filing period, which had

closed on June 2, 2020. Mr. Sigurdson also said that the Centennial Office Building, and therefore the Board's offices, remained closed to the public due to the COVID-19 situation. The Board, however, had been granted an exception from the general work-from-home order that allowed one or two staff members to go to the office to process mail and payments received, send out and process reports, and conduct remote meetings.

Mr. Sigurdson then stated that at the May 6, 2020, meeting, the Board had instructed staff to prepare a guidance about the notice that must be given when political entities that are registered with the Board sell items for fundraising purposes. Mr. Sigurdson directed members' attention to the draft guidance attached to his memorandum. Members discussed the draft guidance and whether formally issuing that document would constitute unpromulgated rulemaking. Members asked staff to delay distribution of the guidance document while these questions were pending.

## **ENFORCEMENT REPORT**

### **A. Consent item**

#### **1. Request to terminate lobbyist registration of Jake Loesch retroactive to end of 2018 on behalf of the Minnesota Association of County Social Services Administrators (MACSSA) (4036), and register Mr. Loesch retroactive to beginning of 2019 on behalf of the Association of Minnesota Counties (AMC) (61)**

Mr. Olson told members that at the May 2020 meeting, the Board had approved retroactive changes to the lobbyist registrations of five lobbyists who should have been registered as lobbyists for the Association of Minnesota Counties (AMC) as of early 2019 rather than the Minnesota Association of County Social Services Administrators (MACSSA). Mr. Olson said that when making those changes, staff realized that a former lobbyist, Jake Loesch (3270), should have been included in the request considered by the Board. Mr. Olson stated that, like the other lobbyists, Mr. Loesch was employed by Goff Public and should have been terminated as a lobbyist for MACSSA as of the end of 2018 and registered as a lobbyist for the AMC instead as of the beginning of 2019. Because the request with respect to Mr. Loesch was the same as the request approved by the Board at its May 2020 meeting, and because it was needed to allow a reporting lobbyist to file the disbursement reports necessitated by the changes approved by the Board, staff made Mr. Loesch's termination as a lobbyist for MACSSA retroactive to 12/31/2018 and registered Mr. Loesch as a lobbyist for the AMC for the period from 1/1/2019 through 2/22/2019. Mr. Olson said that Mr. Loesch ceased being a lobbyist in February of 2019.

After discussion, the following motion was made:

Member Swanson's motion: To approve the item on the consent agenda.

Vote on motion: A roll call vote was taken. All members voted in the affirmative.

**B. Waiver requests**

Name of Candidate or Committee	Late Fee & Civil Penalty Amount	Reason for Fine	Factors for waiver and recommended action	Board Member's Motion	Motion	Vote on Motion
Karen Francois (DEED)	\$100 LFF \$1,000 CP	2018 annual EIS	Official left DEED in 4/2018. Board only had former work contact information on file so she did not receive notices of annual EIS. Staff found current contact information in late December 2019. EIS due 1/28/2019 and filed 1/13/2020. RECOMMENDED ACTION: Waive	Member Leppik	To approve the staff recommendation.	A roll call vote was taken. All members voted in the affirmative.
CPC LLC (Community Partnership Collaborative) (7525)	\$325 LFF	2019 lobbyist principal	Principal's sole lobbyist mistakenly filed amended lobbyist disbursement report 3/12/2020 rather than lobbyist principal report due 3/16/2020. After error was discovered, principal report was filed on 4/2/2020. RECOMMENDED ACTION: Waive	Member Leppik	To approve the staff recommendation.	A roll call vote was taken. All members voted in the affirmative.
MN Professional Fire Fighters (1210)	\$575 LFF	2019 lobbyist principal	Principal's designated lobbyist mistakenly filed amended lobbyist disbursement report on due date 3/16/2020 rather than lobbyist principal report. After error was discovered principal report was filed on 4/16/2020. RECOMMENDED ACTION: Waive	Member Leppik	To approve the staff recommendation.	A roll call vote was taken. All members voted in the affirmative.
AFSCME Council 5 (900)	\$525 LFF	2019 lobbyist principal	Principal's operations were disrupted because it closed offices suddenly due to suspected case of COVID-19. Principal had just begun transitioning to working remotely when report came due 3/16/2020. Report filed 4/14/2020. RECOMMENDED ACTION: Waive	Member Leppik	To approve the staff recommendation.	A roll call vote was taken. All members voted in the affirmative.
Minnesota TruckPAC (40756)	\$25 LFF	2020 1st quarter	Employee of association that operates this committee was busy with extra work due to COVID-19 and mistakenly filed report one day late. Cash balance on 3/31/2020 was \$25,370. RECOMMENDED ACTION: Waive	Member Leppik	To approve the staff recommendation.	A roll call vote was taken. All members voted in the affirmative.

Minneapolis Regional Labor Federation (30011)	\$75 LFF	2020 1st quarter	Association that operates this political fund and IE committee was dealing with disruptions caused by COVID-19 including having staff work remotely when reports came due on 4/14/2020. Reports were filed 4/17/2020 and 4/15/2020, listing cash balances of \$28,371 and \$25,165, respectively. RECOMMENDED ACTION: Waive	Member Leppik	To approve the staff recommendation.	A roll call vote was taken. All members voted in the affirmative.
Neighbors for Anoka County (41164)	\$25 LFF	2020 1st quarter		Member Leppik	To approve the staff recommendation.	A roll call vote was taken. All members voted in the affirmative.
Minnesota Eye PAC (80001)	\$25 LFF	2020 1st quarter	Employee of law firm that filed report on behalf of fund mistakenly filed report one day late. Cash balance as of 3/31/2020 was \$16,416. RECOMMENDED ACTION: Waive	Member Leppik	To approve the staff recommendation.	A roll call vote was taken. All members voted in the affirmative.
Mutual Success (41114)	\$400 LFF	2020 1st quarter	New CEO of association that operates this IE committee was working remotely due to COVID-19 and didn't realize report needed to be filed. Committee did not have any financial activity during reporting period. Report was due 4/14/2020 and no-change statement was filed 5/6/2020. Cash balance as of 3/31/2020 was \$2,816. RECOMMENDED ACTION: Waive	Member Leppik	To approve the staff recommendation.	A roll call vote was taken. All members voted in the affirmative.
Water is Life PAC (41188)	\$425 LFF	2020 1st quarter	Treasurer had difficulty initializing 2020 calendar year in CFR software. Report was due 4/14/2020 and was filed 5/7/2020, reflecting no financial activity during reporting period. Committee also owed \$25 LFF from 2018. Treasurer sent payment for \$240, the total remaining committee funds. \$25 was applied to 2018 LFF and remaining \$215 was applied toward this LFF, treasurer states that committee will terminate. RECOMMENDED ACTION: Reduce LFF by \$210 conditioned on committee's termination within 30 days.	Member Swanson	To approve the staff recommendation.	A roll call vote was taken. All members voted in the affirmative.

<p>Roque Diaz        (Perpich Center        for Arts        Education)</p>	<p>\$50 LFF</p>	<p>Original        EIS</p>	<p>Official was appointed in November 2018. EIS was due 1/28/2019 and was filed 3/28/2019. Official states that EIS was filed late due to series of unfortunate events and payment of LFF would cause economic hardship especially due to financial difficulties caused by COVID-19. Official is seeking reconsideration of reduction from \$100 to \$50 granted in May. RECOMMENDED ACTION: None</p>	<p>Member        Leppik</p>	<p>To waive the        remaining \$50        LFF.</p>	<p>A roll call        vote was        taken.        Motion        failed        (Haugen,        Leppik        voted aye,        Rosen,        Swanson        voted no).</p>
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**C. Informational Items**

**1. Payment of late filing fee for 2020 1<sup>st</sup> quarter report of receipts and expenditures**

Water is Life PAC, \$215 (partial payment)  
 PROGRESSPPAC, \$25  
 Minnesota Farmers Union PAC, \$25

**2. Payment of late filing fee for 2019 year-end report of receipts and expenditures**

Minnesota Muskie & Pike Alliance Legislative Fund, \$250  
 Minnesota Gun Owners Political Action Committee, \$50

**3. Payment of late filing fee for 2018 year-end report of receipts and expenditures**

Minnesota Gun Owners Political Action Committee, \$1,000  
 School Lunch Bunch, \$200

**4. Payment of late filing fee for 2018 pre-general report of receipts and expenditures**

Minnesota Gun Owners Political Action Committee, \$1,000

**5. Payment of late filing fee for September 2018 report of receipts and expenditures**

Minnesota Gun Owners Political Action Committee, \$500 (remaining balance)

**6. Payment of late filing fee for 2018 1<sup>st</sup> quarter report of receipts and expenditures**

Water is Life PAC, \$25

**7. Payment of late filing fee for lobbyist principal report due 3/16/2020**

Southeast Minnesota Association of Realtors, \$475  
UNITE HERE, \$450  
Meridian Behavioral Health, \$425  
Inter Faculty Organization, \$350  
Johnson Controls, Inc., \$325  
Ed Allies, \$100  
Minnesota Gun Owners Caucus, \$100  
Carver County Local 2789, \$75  
Midwest Bonding LLC, \$50  
American Institute of Architects-MN (AIA Minnesota), \$25

**ADVISORY OPINION REQUEST 453 – PODCAST AS CONSTITUENT SERVICE**

Mr. Sigurdson presented members with a memorandum regarding this matter that is attached to and made a part of these minutes. Mr. Sigurdson told members that the advisory opinion request had been made by Senator Karla Bigham who had signed a release making her request and the resulting opinion public data. Mr. Sigurdson said that the request asked a series of questions about a podcast produced, hosted, and initially paid for by the legislator. Mr. Sigurdson stated that the draft opinion concluded that the podcast described in the facts of the opinion was a constituent service, which is a type of noncampaign disbursement. Mr. Sigurdson said that based on that determination, the draft opinion went on to address questions related to payment of the podcast’s production and distribution costs, the disclaimers that would be required for the podcast, and the limitations on the guests who would appear on the podcast.

After discussion, the following motion was made:

Member Swanson’s motion: To approve the advisory opinion as drafted.

Vote on motion: A roll call vote was taken. All members voted in the affirmative.

**LEGAL COUNSEL’S REPORT**

Mr. Hartshorn presented members with a legal report that is attached to and made a part of these minutes. Mr. Hartshorn had nothing to add to the legal report.

**OTHER BUSINESS**

There was no other business to report.

**EXECUTIVE SESSION**

The vice chair recessed the regular session of the meeting and called to order the executive session. Upon recess of the executive session, the vice chair had nothing to report into regular session.

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

Respectfully submitted,



Jeff Sigurdson  
Executive Director

Attachments:  
Executive director's report  
Memorandum regarding Advisory Opinion 453  
Draft Advisory Opinion 453  
Legal report



# MINNESOTA CAMPAIGN FINANCE BOARD

**Date:** May 27, 2020

**To:** Board Members

**From:** Jeff Sigurdson, Executive Director

**Telephone:** 651-539-1189

**Re:** Executive Director's Report

## **Board Member Appointments**

Any action of the Board requires at least four concurrent votes. Therefore, a quorum of four members is needed for the Board to meet for any reason other than an informational hearing. At the June 3, 2020, Board meeting the minimum of four Board members will be available. Former members Bob Moilanen and Carol Flynn were appointed to four-year terms by Governor Walz in July of 2019. Board members must be confirmed by both bodies of the legislature by the forty-fifth legislative day after appointment or by adjournment sine die, whichever occurs first. A confirmation hearing for Mr. Moilanen and Ms. Flynn was scheduled in the House, but was cancelled due to the pandemic. Therefore, when the legislature adjourned sine die on May 18 the appointments for Mr. Moilanen and Ms. Flynn lapsed. The positions held by Mr. Moilanen and Ms. Flynn will be published as open by the Secretary of State on June 1, 2020. The period for application for the positions must be open at least 25 days, with the process of appointment taking at least another 10 days after the close of the minimum application period.

The Board's ability to have a quorum of members is further complicated by the expiring terms of Members Swanson and Leppik. The appointments for Members Swanson and Leppik expired on January 6, 2020. However, a member may continue to serve with an expired term until July 1, if a replacement has not been appointed. Unless Members Swanson and Leppik are reappointed, or new members appointed for their positions, before July 1, 2020, the Board will cease to have a quorum.

I have been in communication with the Governor's office on the inability of the Board to meet without a quorum, and they are aware of the urgent need to move forward with Board appointments.

## **Board Operations - Reporting Periods**

Notices of the need to file the 2<sup>nd</sup> Report of Receipts and Expenditures were sent to 342 political committees, political funds, and political party state central committees and legislative caucuses on May 18, 2020. The reports are due on June 15, 2020.



Notices of the need to file the 1st Lobbyist Disbursement Report for 2020 were sent to 818 lobbyists on May 15, 2020. This report is also due on June 15, 2020.

The candidate filing period for 2020 opened on May 19, and closes on June 2, 2020. Candidates who file for state level office are provided a filing packet from the Board with information and forms needed to register a committee, sign the public subsidy agreement, and file an Economic Interest Statement (EIS). Staff prepared and mailed 1,100 packets to filing officers throughout the state. An EIS statement must be filed by all candidates for state level office, both incumbents and challengers, within 14 days of filing an affidavit of candidacy. EIS statements filed by candidates are available for review on the Board's website.

### **Impact of COVID-19**

The Board offices remain closed to the public, as does the Centennial Office Building. Most staff continue to work from home as directed by the Governor for services that are not considered essential. However, the Board has been granted exceptions from the general order to work from home in order to process mail and payments received, send out and process reports, and conduct remote meetings (currently WebEx). In practice this means that on most days there is one person working in the office. On only one occasion has there been two staff in the office on the same day since the pandemic closed state offices. The Department of Administration has installed a sneeze guard at the front counter in the Board's office, and has provided additional cleaning supplies. My expectation is that the Board's office will reopen this summer in conjunction with the opening of the Centennial Office Building. However, I expect that staffing will remain limited even when the building opens, with most staff working from home for the foreseeable future.

### **Guidance on notice required when selling items to raise money for a political purpose.**

The Board issued a probable cause determination dismissing the complaint by Andrew Schmitz regarding the Best Fair Foods political fund at the May 6, 2020, meeting. The complaint alleged that Best Fair Foods did not comply with the requirements of Minnesota Statutes section 10A.271. This statute requires that either written or verbal notice be given to individuals who purchase an item that is sold to raise funds for a political purpose. The notice informs the buyer that the funds from the purchase will go to a political committee.

At the May 6, 2020, meeting the Board instructed staff to develop guidance for committees trying to comply with the provisions of Minnesota Statutes section 10A.271, and to bring the guidance back for Board review. A draft of the requested guidance is attached to this report.



## Notice required when selling things to raise money for political purposes

Minnesota Campaign Finance and Public Disclosure Board

Candidates, political parties, and political committees and funds often sell things, such as t-shirts or hats, to raise money to spend on elections. The entire amount paid for an item is a contribution from the purchaser to the candidate, party unit, committee, or fund selling the item.

Notice must be given to the purchaser at the time of the sale that the purchase is a political contribution. This sheet describes the notice that must be given.

**What must the notice say?** The notice must tell the purchaser that the proceeds from the sale are a political contribution and the full name of the candidate committee, party unit, or political committee or fund to whom the contribution is being made.

**How must the notice be given?** The notice must be given verbally at the time of sale or through the prominent display of a written notice in immediate proximity to the point of sale.

**What is immediate proximity to the point of sale?** Immediate proximity to the point of sale means next to every cash register or location where the item can be purchased. On websites, the notice should be placed on the payment screen.

**What is prominent display?** The law establishing the notice requirement does not define prominent display or set a minimum type size that will always satisfy that requirement. In addition, given the many types of locations where fundraising merchandise is sold, it is not possible to establish specific recommendations that will be appropriate in every situation. But the purpose of the prominent display requirement is to ensure that the purchaser knows at the time of the sale that he or she is making a political contribution. Following the recommendations below for written notices will help to ensure that they are prominent enough to achieve that purpose.

- Put the notice on its own sheet of paper.
- Put the title “Notice to Purchasers – Political Contribution” at the top of the notice page.
- The font size for the notice text should be as large as, or larger than, the font size used on most other signs in the vicinity.
- Putting the notice in bold type face is encouraged.
- Set up websites to require purchasers to acknowledge the notice as part of the payment process.

**Are there any exceptions to the notice requirement?** The notice does not have to be given at fund-raising events that require the purchase of a ticket to attend or at events where the main purpose is to conduct fundraising.

**Remember:** Because the entire amount paid for the merchandise is a contribution, the purchaser’s name and address must be obtained for any purchases over \$20. For any purchases over \$200, the purchaser’s employer (or occupation if no employer) and Board registration number (if registered), must also be obtained.



# MINNESOTA

## CAMPAIGN FINANCE BOARD

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**Date:** May 27, 2020

**To:** Board Members

**From:** Jeff Sigurdson, Executive Director

**Telephone:** 651-539-1189

**Re:** Advisory Opinion 453 – Use of a podcast as a constituent service

The request for this advisory opinion was received from Senator Bigham on April 27, 2020. Senator Bigham signed a release making her request and the resulting opinion public data. Because of the timing of the request the matter was laid over at the May 6, 2020, Board meeting.

The request asks a series of questions regarding a podcast produced, hosted, and initially paid for by the legislator. The request provides specific facts regarding the podcast's content and participants.

The opinion as drafted states that the podcast described in the facts of the opinion is a constituent service, which is a type of noncampaign disbursement. Based on that determination, the opinion then addresses subsequent questions related to paying the costs to produce and distribute the podcast, disclaimers that may be required on the podcast, and limitations on guests who appear on the podcast. The reasoning and statutory basis for the opinion is more fully explained in the draft.

Attachments:

Advisory opinion request

Draft advisory opinion

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

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

Issued to: Senator Karla Bigham  
PO Box 18  
Cottage Grove, MN 55016

**RE: Podcast as a constituent service**

**ADVISORY OPINION 453**

**SUMMARY**

A legislator may produce or participate in a podcast to discuss public policy and current events and may pay for the podcast with personal funds. Whether the podcast expenses must be accounted for through the legislator's principal campaign committee depends on the content of the podcast.

**FACTS**

As a state senator who is a declared candidate for reelection, you request an advisory opinion from the Campaign Finance and Public Disclosure Board based on the following facts which were provided to the Board in a written request and through conversations with Board staff.

1. You plan to develop and launch a podcast. You will be the host of the podcast.
2. You will pay the cost of producing the podcast and the costs for making the podcast available online with personal funds. At some point you may ask for donations or accept sponsorships to help cover the costs of producing and distributing the podcast. You do not intend to use funds from your principal campaign committee for the podcast.
3. The podcast will focus on public policy, organizations in your community, and current events in that community.
4. The podcast will feature guests that may include local elected officials, fellow colleagues in the legislature, elected officials on a federal level, business professionals, community members, and other relevant guests depending on the topic.
5. Depending on the guest and the subject matter of the podcast the discussion may be considered partisan in nature.

6. Neither you as the host nor any guest will ask for votes, contributions for any political campaign or political organization, or assistance or support for any political campaign.
7. The podcast will have its own email, webpage, and social media accounts.

### **ISSUE ONE**

May a legislator who is a candidate for re-election produce and host a podcast that is not paid for by the official's principal campaign committee?

### **OPINION ONE**

Yes. A legislator who is a candidate for re-election may produce and host a podcast that is not paid for by the legislator's principal campaign committee. However, whether the podcast must be accounted for by the legislator's principal campaign committee is determined by the content of the podcast. Candidates and elected officials have commercial, professional, and personal interests that may be the basis for a podcast that would clearly be outside the scope of the regulation and reporting requirements of Chapter 10A. Therefore, the costs of those podcasts would not need to be accounted for by a principal campaign committee.

However, based on the facts presented for this advisory opinion, the subject podcast will focus on discussions of public policy, local organizations, and current events that are of importance to the Senator's community. The purpose of the podcast is therefore to provide a service in the form of information that is relevant to the Senator's constituents. A constituent service is a noncampaign disbursement under Minnesota Statutes section 10A.01, subdivision 26.

The Board has long recognized that some services provided by a legislator to constituents are not for the purpose of influencing the nomination or election of the legislator. In Advisory Opinions 19 and 24<sup>1</sup> the Board recognized the holding of informational hearings, speaking at meetings in the legislator's district, and sending legislative questionnaires and legislative reports as constituent services. Advisory Opinion 19 explained as follows:

One of the functions of a legislator is to report to his constituents on possible legislative action and to obtain their opinions on matters which come before the Legislature so that he may represent them during the session. Any activities designed to enable him to fulfill that function are legitimate constituent services, even though they may have an incidental effect on the legislator's chances for re-election.

Notably both advisory opinions were issued prior to the legislature creating the definition for the term "noncampaign disbursement," which included constituent services, in 1978.<sup>2</sup>

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<sup>1</sup> Advisory Opinion 19 (April 18, 1975). Advisory Opinion 24 (August 5, 1975). While these two opinions provide insight into the Board interpretation of Chapter 10A, opinions issued by the Board prior to 1994 have lapsed, and no longer provide safe harbor to the requester.

<sup>2</sup> Laws of 1978, Chapter 463, section 10.

More recently the Board provided in Advisory Opinion 365<sup>3</sup> that the cost of producing a cable television program on which legislators may serve as hosts and "... be interviewed for perspectives on current issues and matters occurring in the legislature" may be reported as a constituent service "[i]f the purpose of the candidate appearing on the program was to provide constituents with information on issues facing the state...."

Advisory Opinion 403<sup>4</sup> also acknowledged information on issues and legislative action as a constituent service when it provided:

The Board has extended the concept of constituent services to cover annual reports of legislators to their constituents. While such a service is not requested by the recipient, there is a long tradition and expectation that part of what a legislator does for his or her constituents is to keep them informed.

While the use of a podcast as the medium to distribute information to constituents is a new fact for the Board to consider, both the nature of the information provided on the podcast and the role of a legislator leading a discussion of the issues are consistent with the advisory opinions discussed above. The Board therefore concludes, based on the facts provided, that the podcast is a constituent service under Chapter 10A.

Because a constituent service could provide value to the reelection campaign of a legislator, Minnesota Statutes section 10A.173, subdivision 1, paragraph (a), establishes a period of time in which one-half of a constituent service is a campaign expenditure and a period of time in which the entire cost of those services is a campaign expenditure. The period where one-half of the constituent service is a campaign expenditure begins when the legislature adjourns sine die in a year when the legislator is on the ballot, and continues for 60 days. After the 60-day period expires through election day, the entire expense is a campaign expenditure.

In this case, the cost of producing and distributing a podcast episode must be divided between noncampaign disbursement and campaign expenditure if the episode is released during the 60 days following adjournment sine die in any year in which the Senate is on the ballot. The cost of producing and distributing a podcast episode after 60 days following the adjournment of the legislature sine die is counted entirely as a campaign expenditure.

The Board notes that the Senator plans to develop a website and use email and other social media to promote and distribute the podcast. The costs of the website, email, and other social media platforms used to promote the podcast are distribution costs of the podcast and must also be divided between noncampaign disbursement and campaign expenditure as described above.

Services for constituents are a type of noncampaign disbursement only available to incumbent legislators and constitutional officers because only incumbents have constituents. A podcast produced by a candidate who is not an incumbent could not be classified as a constituent service, and would therefore be evaluated differently than the podcast that is the subject of this opinion.

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<sup>3</sup> Advisory Opinion 365 (February 22, 2005).

<sup>4</sup> Advisory Opinion 403 (March 3, 2009).

## **ISSUE TWO**

Does the above-described podcast constitute an in-kind contribution to the campaign committee?

### **OPINION TWO**

Up to the point at which the cost of producing and distributing a constituent service must be divided between noncampaign disbursement and campaign expenditure a legislator has the option of paying for the constituent service with either personal funds or the funds of his or her principal campaign committee. Minnesota Rules 4503.0950, subpart 1, provides:

Constituent services which a principal campaign committee would report as noncampaign disbursements under Minnesota Statutes, section 10A.01, subdivision 26, clause (6), and which are paid for with the personal funds of an incumbent are not reportable.

However, once a constituent service is at least in part a campaign expenditure it must be paid for by the legislator's principal campaign committee, or if the cost is paid for by the legislator, the cost must be reported as an in-kind donation from the legislator to the principal campaign committee.

## **ISSUE THREE**

May the podcast accept individual donations to offset capital and ongoing operational costs?

### **OPINION THREE**

Yes, but donations from individuals that are used to pay for noncampaign disbursements, including constituent services, must be deposited in the account of the principal campaign committee of the candidate. Money donated to a principal campaign committee is a contribution<sup>5</sup> to the committee, and is subject to the source and contribution limits provided in Chapter 10A. Because donations for the podcast must be deposited in the principal campaign committee's account, the solicitation of donations to pay for the podcast would in effect be soliciting contributions to the principal campaign committee.

## **ISSUE FOUR**

May the podcast be sponsored by a business or other association? If yes, are there any required disclaimers?

### **OPINION FOUR**

A corporation is prohibited from making contributions to a principal campaign committee, and principal campaign committees are prohibited from accepting contributions from corporations.<sup>6</sup> For the purposes of this advisory opinion the term "sponsorship" is

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<sup>5</sup> Minnesota Statutes section 10A.01, subdivision 11, defines "contribution."

<sup>6</sup> Minnesota Statutes section 211B.15.

differentiated from a contribution in that with a sponsorship the business or association pays for the cost of the podcast in exchange for advertising time in the podcast. Presumably a sponsor of the podcast would receive marketing exposure of at least equal value to the cost of producing and distributing the podcast. The sponsorship would in theory not be a contribution to the principal campaign committee, but instead something similar to a business transaction.

However, principal campaign committees are not established to operate as businesses. Chapter 10A does not contemplate principal campaign committee making income from providing services to constituents. More importantly, if the Board were to allow business sponsorship of noncampaign disbursements it would defeat contribution limits and allow access to sources of funding, primarily to incumbent legislators, otherwise prohibited by Chapter 10A. The Board concludes therefore that corporations and other associations may not sponsor noncampaign disbursements, including a podcast provided as a constituent service.<sup>7</sup>

#### **ISSUE FIVE**

If at some future time the podcast was used for campaign purposes, what should be reported to the Board?

#### **OPINION FIVE**

As noted in opinion one, the cost of producing and distributing any podcast released after the adjournment of the legislature sine die must be divided between noncampaign disbursements and campaign expenditures as provided in Minnesota Statutes section 10A.173, subdivision 1. The portion of costs for the podcasts that are campaign expenditures are reported to the Board and count against the legislator's spending limit.

#### **ISSUE SIX**

Would the podcast be required to have a disclaimer that the podcast is not related to a political campaign?

#### **OPINION SIX**

No, a podcast that is entirely a constituent service when it is released does not require the disclaimer set forth in Minnesota Statutes section 211B.04 because it is not campaign material. However, Minnesota Statutes section 10A.173, subdivision 1 (c), provides:

A communication prepared as a service for a constituent must include the disclaimer required by section 211B.04 when the communication is disseminated after adjournment sine die of the legislature in the election year for the office held.

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<sup>7</sup> The Board announced in the Findings and Order in the Matter of a Contribution to the 23rd Senate District DFL from the Maschka, Riedy & Ries Law Firm that a business may not sponsor fundraising events in part because of the enforcement problems listed in issue four.



If the content of the podcast changes from a constituent service to campaign material then the standard campaign disclaimer provided in section 211B.04 is required at the time the content of the podcast changes.

### **ISSUE SEVEN**

If a guest is an elected official, are there any required disclaimers?

### **OPINION SEVEN**

No, having a guest on the podcast who is an elected official does not require additional campaign disclaimers for the elected officials. The facts of the opinion provide that neither the host of the podcast nor any guest will ask for votes, contributions for any political campaign or political organization, or assistance or support for any political campaign. Minnesota Rules 4503.1000, subpart 1, provides:

Campaign materials, including media advertisements, produced and distributed on behalf of one candidate which contain images of, appearances by, or references to another candidate, but which do not mention the candidacy of the other candidate or make a direct or indirect appeal for support of the other candidate, are not contributions to, or expenditures on behalf of that candidate.

As explained in opinion six, when the podcast is a constituent service a campaign disclaimer is not required. When the podcast is a campaign expenditure on behalf of the legislator because of adjournment sine die or because of a change in the content of the podcast, a campaign disclaimer for the legislator's committee is required. However, as provided in the above rule the appearance of another candidate in the podcast will not be a campaign expenditure for that candidate if there is no direct or indirect appeal for support for the other candidate. If the podcast is not campaign material for the other candidate, then a disclaimer for the other candidate's campaign is not required.

### **ISSUE EIGHT**

Can the podcast discuss legislation that is sponsored or supported by the host? Additionally, can the host promote, support, or oppose legislation on the podcast?

### **OPINION EIGHT**

Yes, the podcast may discuss legislation that is sponsored or supported by the host, and the podcast may also be used to promote, support, or oppose legislation. As noted in the facts of the opinion the discussion of issues and legislation may at times be considered partisan. Information provided as a constituent service does not have to be neutral or nonpartisan in nature. However, a podcast that advocates for the election or defeat of candidates because of their position on legislation is not a constituent service.

Issued: June 3, 2020

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Gary Haugen, Vice Chair  
Campaign Finance and Public Disclosure Board

