

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

.....
July 6, 2023
Blazing Star Room
Centennial Office Building
.....

MINUTES

The meeting was called to order by Chair Soule.

Members present: Asp, Flynn, Leppik, Rashid, Soule, Swanson

Others present: Sigurdson, Engelhardt, Olson, staff; Hartshorn, counsel (by Webex)

MINUTES (June 7, 2023)

The following motion was made:

Member Flynn's motion: To approve the June 7, 2023, minutes as drafted.

Vote on motion: Unanimously passed.

MINNESOTA CHAMBER OF COMMERCE LAWSUIT

Assistant Attorneys General Janine Kimble and Matt Mason joined the meeting by Webex. Ms. Kimble stated that she, Mr. Mason, and Mr. Hartshorn will be representing the Board in the federal lawsuit filed by the Minnesota Chamber of Commerce. Ms. Kimble said that the complaint was served on the Attorney General's Office on July 3, and in response to a question from Member Leppik, stated that a responsive pleading is due within 21 days. Mr. Hartshorn explained how the Attorney General's Office anticipates interacting with Board staff and Board members as the litigation proceeds.

CHAIR'S REPORT

2023 meeting schedule

Mr. Sigurdson will work with Board members after the meeting to set a meeting date for August.

EXECUTIVE DIRECTOR'S REPORT

Mr. Sigurdson presented members with a memorandum that is attached to and made a part of these minutes. Mr. Sigurdson reviewed the proposed operational budget for fiscal year 2024, which is a 71%

increase compared to fiscal year 2023. Mr. Sigurdson said that the increase is accounted for largely by new staff and by improvements to the Board's information technology resources.

Mr. Sigurdson stated that the line-item for professional technical services includes the migration of the Board's servers to a cloud server, development of real-time geographic mapping on the Board's website for information filed with the Board, analysis and improvement of the Board's IT security, general improvements to the Board's website including accessibility, and development of online registration systems for the lobbying and campaign finance programs.

Mr. Sigurdson stated that the line-item for computer systems and services represents the annual cost of hosting the Board's servers on the Azure cloud. Mr. Sigurdson said that the line-item for employee development is higher than normal because of the need for IT training classes. Mr. Sigurdson explained that the line-item for state agency provided tech services includes services to be provided by MNIT separate from those available from outside vendors. Mr. Sigurdson stated that the line-item for centralized IT covers the cost of hosting the Board's website, email network, and VOIP phone system.

The following motion was made:

Member Leppik's motion: To approve the proposed budget for fiscal year 2024.

Vote on motion: Unanimously passed.

ENFORCEMENT REPORT

A. Consent Items

1. Request to withdraw lobbyist registration of Lilly Sasse (5268) for principal We Choose Us (8049)

Ms. Sasse is requesting the withdrawal of her registration for principal We Choose Us. She unintentionally registered for this principal not realizing it was unnecessary as she is registered as a lobbyist for ISAIAH. We Choose Us is a project of ISAIAH and is not a distinct legal entity. Ms. Sasse and Brian Kao appeared before the Board by Webex to briefly explain the request.

2. Request to Withdraw Lobbyist Registration of Patricia Torres Ray (5300) for PTR Associates LLC - Patricia Torres Ray (8067)

Ms. Torres Ray is requesting the withdrawal of her registration for principal PTR Associates LLC - Patricia Torres Ray. Ms. Torres Ray registered for this principal, not realizing that she instead needed to register as a lobbyist for the individual entities that are paying for her services. Ms. Torres Ray has since registered as a lobbyist on behalf of 11 separate principals.

B. Discussion Items

1. Balance adjustment request – Itasca County RPM (20213)

The party unit’s new treasurer discovered a cash balance discrepancy. The discrepancy appears to be largely attributable to reporting errors within the 2020 calendar year but the party unit is unable to find the precise source of the discrepancy. The balance in the party unit’s bank account at the end of 2021 was \$14,185.05, \$782.50 more than the amount reported to the Board. Currently there is a discrepancy of \$713.33 between the party unit’s reported 2022 ending cash balance and the balance in the party unit’s bank account. The party unit is thereby requesting an upward adjustment of \$713.33 to its reported 2022 ending cash balance, changing the balance from \$1,385.78 to \$2,099.11.

The following motion was made:

Member Swanson’s motion: To approve the requests stated in consent items 1 and 2 and discussion item 1.

Vote on motion: Unanimously passed.

C. Waiver Requests

Entity	Late Fee/ Civil Penalty	Report Due	Factors and Recommended Action	Board Member's Motion	Motion	Vote on Motion
1. Kenneth Middlebrook (Board of Social Work)	\$90 LFF	2022 Annual EIS	Statement due January 30, 2023 and received by the Board March 10, 2023. Public official had numerous health issues on and around the time the report was due and notices were sent. RECOMMENDED ACTION: Waive	Flynn	Approve staff recommendation for requests 1-5 and 8	Unanimously approved
2. Jan Ludwigson (Petrol Board)	\$45 LFF	2022 Annual EIS	Statement due January 30, 2023 and received by the Board February 27, 2023. The official retired in September 2022 and emails, calls and letters went to the state office. The official was no longer able to access their state email after they retired. The information was forwarded to their personal email on February 26 and they promptly filed once staff was able to update their email. RECOMMENDED ACTION: Waive	Flynn	Approve staff recommendation for requests 1-5 and 8	Unanimously approved

<p>3. Tim Peterson (Sunrise River WMO)</p>	<p>\$25 LFF</p>	<p>2022 Annual EIS</p>	<p>Statement due January 30, 2023 and received by the Board February 21, 2023. Public official had issues completing the online form as he had cataracts and needed assistance of staff and his wife. Prior waivers include \$800 CP and \$100 LFF for Original EIS from 2019 and \$85 LFF for 2019 Annual EIS. RECOMMENDED ACTION: Waive</p>	<p>Flynn</p>	<p>Approve staff recommendation for requests 1-5 and 8</p>	<p>Unanimously approved</p>
<p>4. Neighbors for Sheigh (18707)</p>	<p>\$1,000 LFF</p>	<p>2022 Pre- Primary 24-Hour Notice</p>	<p>Notice due July 29, 2022 and not filed. This was a first time candidate who was unsure of the process and did not realize the notice was required. The committee has terminated and had a \$95 balance as of December 31, 2023. RECOMMENDED ACTION: Reduce to \$250</p>	<p>Flynn</p>	<p>Approve staff recommendation for requests 1-5 and 8</p>	<p>Unanimously approved</p>
<p>5. Dan Halvorsen (Lower Mississippi River WMO)</p>	<p>\$20 LFF</p>	<p>2022 Annual EIS</p>	<p>Statement due January 30, 2023 and received by Board February 18, 2023. Public official was traveling during January and February and did not have access to his mail. Public official cannot find email from Board regarding filing requirements. Board records show multiple emails sent to the email on file. Records also indicate a voicemail was left on the number on file February 9, 2023. RECOMMENDED ACTION: Do not waive</p>	<p>Flynn</p>	<p>Approve staff recommendation for requests 1-5 and 8</p>	<p>Unanimously approved</p>

<p>6. Michelle Vaughn (Board of Veterinary Medicine)</p>	<p>\$75 LFF</p>	<p>2022 Annual EIS</p>	<p>Statement due January 30, 2023 and received March 7, 2023. Public official did not think she had to file since she ended her tenure with the Board on January 1, 2023. Numerous mailings were sent to the official along with a message left with her office, prior to fines starting. It does not appear she attempted to contact Board staff to clarify the filing requirement. This is her first statement that was late since at least 2016. RECOMMENDED ACTION: Do not waive</p>	<p>1. Swanson 2. Leppik</p>	<p>1. Waive 2. Approve staff recommendation</p>	<p>1. Asp, Rashid, Swanson voted in the affirmative, Flynn, Leppik, Soule voted in the negative 2. Five members voted in the affirmative, Rashid voted in the negative</p>
<p>7. Khadija Zeig (Board on Aging)</p>	<p>\$35 LFF</p>	<p>2022 Annual EIS</p>	<p>Statement due January 30, 2023 and received by the Board February 23, 2023. Public official was considering whether to continue as a Board member and was unsure whether the statement was required. RECOMMENDED ACTION: Do not waive</p>	<p>1. Swanson 2. Leppik</p>	<p>1. Waive 2. Approve staff recommendation</p>	<p>1. Asp, Rashid, Swanson voted in the affirmative, Flynn, Leppik, Soule voted in the negative 2. Five members voted in the affirmative, Rashid voted in the negative</p>
<p>8. Peter Hanley (Racing Commission)</p>	<p>\$35 LFF</p>	<p>2022 Annual EIS</p>	<p>Statement due January 30, 2023 and received by the Board February 23, 2023. Official thought he had sent report on time. Staff sent numerous emails and left a voicemail. RECOMMENDED ACTION: Do not waive</p>	<p>Flynn</p>	<p>Approve staff recommendation for requests 1-5 and 8</p>	<p>Unanimously approved</p>

D. Informational Items

1. Return of public subsidy due to exceeding carryforward limit

Foung (Hawj) for Senate 67, \$1,325.53

2. Payment of late filing fee for 2023 1st quarter report of receipts and expenditures

Laborers District Council of Minnesota & ND Political Fund, \$275

3. Payment of late filing fee for 2022 year-end report of receipts and expenditures

NRA Political Victory Fund, \$125
Moren (John) for Senate, \$75
Minneapolis Municipal Retirement Association, \$75
Tad Jude 4A New Attorney General, \$50
Hughes (Dave) for Senate, \$25
Meeker County RPM, \$25

4. Payment of late filing fee for 2022 pre-general report of receipts and expenditures

Pine County DFL (HD 11B), \$150

5. Payment of late filing fee for 2022 September report of receipts and expenditures

Rescue Minnesota, \$75

6. Payment of late filing fee for 2022 pre-primary 24-hour notice of large contributions

NRA Political Victory Fund, \$2,000
Samakab (Hussein) for House, \$250
Citizens for Judge Webber, \$250

7. Payment of late filing fee for 2022 pre-primary 24-hour notice of large contributions

Rescue Minnesota, \$1,000
Safer Hennepin, \$250

8. Payment of civil penalty for lobbyist principal report due March 15, 2023

Environment America dba Environment Minnesota, \$1,000

9. Payment of late filing fee for lobbyist principal report due March 15, 2023

PROCEED, Inc., \$75
Artspace Projects, Inc., \$75
Grand Portage Indian Reservation, \$50
Phyllis Wheatley Community Center, \$50
M A Mortenson Co, \$50

COPAL (Comunidades organizando el poder y acción Latina), \$50
Northern Wind Energy Redevelopment, LLC, \$25
MN Medical Solutions, \$25
Minneapolis Foundation, \$25
Johnson & Johnson, \$25

10. Payment of civil penalty for exceeding individual contribution limit

Anita Gaul for State Senate, \$100

11. Payment of late filing fee for original EIS

Dave Hughes, \$30

12. Payment of late filing fee for 2022 annual EIS

Robert Doty, \$85
Orvin Gronseth, \$75
Colleen Landkamer, \$55
John Harrington, \$35
Clair Schmidt Jr., \$20
Kevin Chamberlain, \$5
Rebecca Werner, \$20

REVOCATION OF ADVISORY OPINIONS

Mr. Sigurdson presented members with a memorandum that is attached to and made a part of these minutes. Mr. Sigurdson stated that it is sometimes necessary to review advisory opinions that have been issued to see if a change in statute or the Board's interpretation of a statute warrants the revocation of an opinion. Mr. Sigurdson explained that when an advisory opinion is revoked by the Board, notice is sent to the requestor of the opinion and it is removed from the Board's website. Mr. Sigurdson said that Board staff recommends the revocation of six advisory opinions.

Mr. Sigurdson stated that Advisory Opinion 383 provides that costs for a candidate to attend a state party convention must be reported as campaign expenditures. Mr. Sigurdson said that in 2008 the legislature added a new noncampaign disbursement category for those expenses, so the conclusion that they must be reported as campaign expenditures is no longer accurate.

Mr. Sigurdson stated that Advisory Opinion 387 provides that credit card processing fees incurred by candidates must be reported as campaign expenditures. Mr. Sigurdson said that in 2010 the legislature added a new noncampaign disbursement category for those expenses, so the conclusion that they must be reported as campaign expenditures is no longer accurate.

Mr. Sigurdson stated that Advisory Opinion 428 provides that an association does not need to register with the Board and report the cost of communications that refer to state candidates as long as there is no coordination and the communications do not contain words of express advocacy. Mr. Sigurdson said that in 2023 the legislature changed the definition of “expressly advocating” to include not only specific words and phrases of express advocacy, but also functionally equivalent language, so the opinion’s review of which communications are independent expenditures is no longer accurate.

Mr. Sigurdson stated that Advisory Opinion 443 provides that a candidate committee in Hennepin County could amend its registration to reflect the office to which the candidate currently seeks election. Mr. Sigurdson stated that the opinion was issued pursuant to a provision in Minnesota Statutes Chapter 383B and both that provision and the underlying statutes that formed the basis of the opinion were repealed by the legislature in 2021.

Mr. Sigurdson stated that Advisory Opinion 446 provides that a candidate may not use campaign committee funds to pay for a home security system or identity theft monitoring. Mr. Sigurdson said that in 2021 the legislature added a new noncampaign disbursement category for those expenses, so the conclusion that they may not be paid for using campaign funds is no longer accurate.

Mr. Sigurdson stated that Advisory Opinion 454 provides that under certain circumstances a political party unit may lease meeting space for use during the legislative session by elected members of the party and other individuals, including lobbyists, who pay a membership fee, without violating the prohibition on certain contributions during the legislative session. Mr. Sigurdson said that in 2023 the legislature expanded the prohibition to include contributions made before the session begins in order to attend an event during session or in order to gain access to a facility during the session, so the conclusion stated in the opinion is no longer accurate.

The following motion was made:

Member Leppik’s motion: To revoke Advisory Opinions 383, 387, 428, 443, 446, and 454.

Vote on motion: Unanimously passed.

ADMINISTRATIVE RULES

Mr. Olson presented members with a memorandum that is attached to and made a part of these minutes. Mr. Olson stated that in June a memorandum describing the Board’s intent to pursue rulemaking and seeking public feedback regarding the topics to be addressed was published on the Board’s website. Mr. Olson said that emails containing a link to the memorandum and soliciting feedback were sent to each treasurer and candidate registered with the Board, each chair of a political committee or fund or party unit registered with the Board, and each lobbyist registered with the Board. Mr. Olson stated that the Board received feedback from five individuals as well as the Minnesota Governmental Relations Council (MGRC).

Mr. Olson explained that one individual suggested that the Board establish clear rules regarding disclaimers on campaign material disseminated via social media and that suggestion has been incorporated within the list of topics within the draft request for comments. Mr. Olson said that one individual stated that unpaid lobbyists should be treated differently than paid lobbyists, which is already the case as long as the individual spends \$250 or less on lobbying within a calendar year, excluding travel expenses and membership dues, and the \$250 threshold will increase to \$3,000 effective January 1, 2024, due to a change in statute. Mr. Olson stated that one individual suggested that the Board increase the maximum amount for an anonymous contribution that may be retained by the recipient. Mr. Olson said that this issue was discussed by the Board previously this year, but the \$20 limit is based on statutes and cannot be changed by rule. Mr. Olson stated that one individual said that it would be helpful if principal campaign committees and political committees and funds were alerted to 24-hour large contribution notice violations as soon as possible to avoid the accrual of a large late filing fee. Mr. Olson explained that when a 24-hour notice is not filed, the Board is typically not aware of the contribution necessitating the filing of the notice until it is disclosed within a periodic report of receipts and expenditures, which often occurs after the maximum late filing fee of \$1,000 has already accrued, so that issue cannot be remedied by rulemaking. Mr. Olson said that one individual offered feedback regarding two separate issues, with the first being that the Board should not be involved in Hennepin County elections. Mr. Olson explained that that is a decision the legislature made that cannot be addressed by rulemaking. Mr. Olson stated that the second issue is that the individual does not feel that the Board understands how difficult it has become for campaign finance filers to obtain the documentation necessary to open a bank account. Mr. Olson said that Board staff is aware of the issue and has worked with individual campaign finance filers to try to resolve issues related to opening a bank account, but the problem can't be remedied by administrative rulemaking because the Board cannot compel financial institutions to change the documentation they required to open a depository account.

Mr. Olson stated that the MGRC offered feedback regarding four specific words or phrases within the statutory changes concerning the lobbying program that will take effect in 2024, which it feels are vague or unclear. Mr. Olson said that the MGRC's feedback is well taken and Board staff intends to address those provisions.

Member Swanson suggested examining Minnesota Rules 4525.0220 regarding summary proceedings, specifically whether a complainant plays any role in the Board consideration of a request for a summary proceeding. Vice Chair Asp suggested including a review of Minnesota Rules 4525.0210 and 4525.0220, in part to expand the rules applicable after probable cause has been found. In response to a concern raised by Member Swanson there was discussion regarding whether a rule is needed to define the term spouse.

The following motion was made and then withdrawn:

Member Swanson's motion: To approve the request for comments as drafted with the deletion of campaign finance topic 6.

After discussion the following motion was made:

Member Asp's motion: To add Minnesota Rules 4525.0210 and 4525.0220, the definition of "legislative caucus" established within Advisory Opinion 450, and defining the term "party's headquarters" as used in Minnesota Statutes section 211B.15, subdivision 8, to the list of rulemaking topics.

Vote on motion: Unanimously passed.

The following motion was made:

Member Swanson's motion: To approve the request for comments as amended, with the deletion of campaign finance topic 6.

Member Swanson spoke in opposition to drafting a rule that would create a loophole within the coordination statutes. Member Asp said that the intent is not to create a loophole but rather to provide clarity to those seeking to comply with the coordination statutes. Member Rashid spoke in favor of including campaign finance topic 6.

Vote on motion: Swanson voted in the affirmative, five members voted in the negative.

After discussion the following motion was made:

Member Asp's motion: To approve the request for comments as amended.

Vote on motion: Unanimously passed.

The following motion was made:

Member Leppik's motion: To approve the resolution authorizing publication of the request for comments.

Vote on motion: Unanimously passed.

LEGAL REPORT

Mr. Hartshorn presented members with a legal report that is attached to and made a part of these minutes. Mr. Hartshorn said that Metro Legal will be attempting to serve the complaint and summons in the Thompson matter, but Mr. Thompson may be difficult to locate and serve.

EXECUTIVE SESSION

Chair Soule recessed the regular session of the meeting and called to order the executive session. Upon recess of the executive session, Chair Soule had nothing to report into regular session.

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

Respectfully submitted,



Jeff Sigurdson
Executive Director

Attachments:

Executive Director's report

Memorandum regarding revocation of Advisory Opinions 383, 387, 428, 443, 446, and 454

Advisory Opinion 383

Advisory Opinion 387

Advisory Opinion 428

Advisory Opinion 443

Advisory Opinion 446

Advisory Opinion 454

Memorandum regarding proposed rulemaking topics, request for comments, and authorizing resolution

List of possible rulemaking subjects presented at June 7, 2023, Board meeting

MGRC feedback

Draft request for comments

Draft resolution authorizing request for comments

Legal report



MINNESOTA CAMPAIGN FINANCE BOARD

Date: June 28, 2023

To: Board Members

From: Jeff Sigurdson, Executive Director

Telephone: 651-539-1189

Re: Executive Director's Report

Board Operations

Lobbying Program: The lobbyist disbursement report covering the period of January 1 through May 31, 2023, was due on June 15, 2023. As of the date of this memo only two of the 875 reports disbursement reports expected from lobbyists have not been filed.

Operational Budget – Fiscal Year 2024

At the start of each state fiscal year the Board ratifies the budget developed by the executive director using salary projections, rent, and MNIT costs provided by the Small Agency Resource Team (SmART). The state fiscal year runs from July 1 to June 30 of the following year. Attached is the proposed budget for fiscal year 2024.

The base budget for fiscal year 2024 is \$1,993,000 which reflects a \$826,000 increase (71%) from the base in fiscal year 2023. The majority of that increase will be used to fund three new staff positions and to invest in the Board's information technology resources. The staff salaries used in the proposed budget assume that the 5.5% increase in salaries negotiated by the MAPE and AFSCME unions will be ratified by state employees.

The fixed costs of staff compensation and office rent are expected to account for \$1,443,089, or 74%, of the total budget. The attached budget breaks down the anticipated expenditures for fiscal year 2024 by general category. The following is a description of category names that are not self-explanatory.

Printing and advertising, \$6,000. This is primarily the cost of a new compilation of statutes and rules.

Professional technical services, \$277,761. The majority of this category will fund IT contracts for the following tasks: migrating the Board's servers to a cloud server, development of real-time geographic mapping on the Board's website for disclosure information filed with the Board, analysis and improvement of the Board's IT security, general improvements to the Board's website (including a review of accessibility), and development of online registration systems for

the lobbying and campaign finance programs. The cost of court reporters for depositions is also paid out of this category.

Computer systems and services, \$50,000. This is the quoted yearly cost for hosting the Board's servers on the Azure cloud, which is a service offered through MNIT.

Employee development, \$23,000. This is a much higher amount than usually budgeted for employee development, and reflects the high cost of IT training classes. The Board's IT staff has no experience with cloud servers and will need significant training on that subject.

State agency provided tech services, \$25,000. MNIT offers services to state agencies separate from those available from outside vendors. For example, MNIT offers varying levels of support for agencies using the Azure cloud, and MNGEO (a branch of MNIT) offers state agencies assistance on geographic projects including geocoding of data and maps.

Centralized IT (MNIT), \$52,000. The cost for using the state's email and VOIP networks, and the cost to host the Board's website.

More so than most years this budget is a working document with some line items being no more than a best guess at actual final costs. As the IT projects progress and staff hiring occurs I will have a better idea of actual costs for the year, and may need to reallocate funds between categories. I will update the Board every three months on the budget, and present any major reallocation of funding between categories for Board approval.

Any funds left over at the end of fiscal year 2024 (the first fiscal year of a biennium) are rolled forward for use in fiscal year 2025. A motion and vote to ratify the budget is required.

Attachment

Fiscal Year 2024 Budget

	Fiscal Year 2024 Operating Budget Detail			
Acct Number	Category		Fiscal Year 2024 Expenditure	
41000	Full time salaries - benefits		1,385,880	
41030	Part-time seasonal staff		17,209	
41050	Overtime		10,000	
41070	Other Benefits		5,000	
41100	Space Rental - Office Lease		55,000	
41110	Printing and advertising		6,000	
41130	Professional technical services		277,761	
41150	Computer systems and services		50,000	
41155	Central Mail		15,000	
41160	Travel - In state		4,150	
41170	Travel - Out of state		6,000	
41180	Employee development		23,000	
41190	State agency provided tech services		25,000	

41196	Centralized IT (MN.IT)		52,000	
41300	Supplies		10,000	
41400	Equip. rental (copier)		9,000	
41500	Maintenance and repairs		2,000	
42020	Attorney General Court Costs		5,000	
43000	Other operating costs		15,000	
47160	Equipment		20,000	
	Operating exp total		1,993,000	
	FY 24 Appropriation		1,993,000	
	Balance		0	



MINNESOTA

CAMPAIGN FINANCE BOARD

Date: June 22, 2023

To: Board Members

From: Jeff Sigurdson, Executive Director

Telephone: 651-539-1189

Re: Revocation of Advisory Opinions 383, 387, 428, 443, 446, and 454

Background

Staff requests the Board to revoke an advisory opinion when a change in a statute used in the rationale for the opinion, or a change in the Board's interpretation of a statute, renders the opinion invalid. Technically, advisory opinions do not have precedential value beyond the requester. However, it is widely accepted that others rely on advisory opinions for guidance. The statute authorizing advisory opinions states that an advisory opinion is binding on the Board with respect to the requester unless, among other things, the advisory opinion has been revoked. Thus, the statute clearly contemplates the revocation of opinions that the Board no longer believes are an accurate reading of the requirements in Chapter 10A, or those sections in Chapter 211B over which the Board has jurisdiction.

Staff recommends that the Board revoke six advisory opinions that were based on statutory provisions that have been in some way superseded by changes to Chapter 10A. A copy of each advisory opinion is attached to this memo.

- Advisory Opinion 383 provides that the costs associated with a candidate attending a state party convention may be paid for with committee funds, but that the costs must be categorized as campaign expenditures. 2008 Minnesota Laws, Chapter 295, added a new noncampaign disbursement for “costs associated with a candidate attending a political party state or national convention in this state.” Therefore, the advisory opinion’s conclusion that the costs for the candidate attending the convention are campaign expenditures is no longer correct.
- Advisory Opinion 387 provides that the cost of credit card transaction processing fees are campaign expenditures that count against a candidate’s campaign spending limit. 2010 Minnesota Laws, Chapter 327, added a new noncampaign disbursement for “costs paid to a third party for processing contributions made by a credit card, debit card, or electronic check.” Therefore, the costs of credit card processing fees are not campaign expenditures for a candidate, and do not count against any applicable spending limit.
- Advisory Opinion 428 provides that an association does not need to register and report to the Board the cost of the association’s communications to the public that refer to specific state candidates as long as the communications are not coordinated with candidates, and the communications do not use express words of advocacy. 2023

Minnesota Laws, Chapter 34, Article 3 (effective August 1, 2023) changes the definition of “expressly advocating” to include not only the recognized words of express advocacy but also statements that when taken as a whole can only be viewed as advocacy to elect or defeat a clearly identified candidate. This “functional equivalent” standard of expressly advocating is used to identify independent expenditures that may require an association to register with and report to the Board. As a result, this advisory opinion is no longer an accurate review of the communications that are independent expenditures that require registration and reporting under Chapter 10A.

- Advisory Opinion 443 provides that a candidate’s committee registered under the provisions of Minnesota Statutes Chapter 383B may amend the registration to reflect the office to which the candidate currently seeks election. This opinion was issued when the Board had specific authority in Minnesota Statutes section 383B.055, subdivision 1, to issue advisory opinions on the requirements of Chapter 383B, sections 383B.041 to 383B.057. These sections, in part, regulated county and certain municipal elections in Hennepin County. 2021 Minnesota Laws, Chapter 31, Article 4 repealed sections 383B.042 to 383B.057 in their entirety and drastically amended section 383B.041. Therefore, both the Board’s statutory authority to issue an advisory opinion on certain provisions of Chapter 383, and the text of Chapter 383B used as the basis for Advisory Opinion 443, no longer exist.
- Advisory Opinion 446 provides that a principal campaign committee may not use funds to pay for the cost of a home security system or for a subscription to an identity theft monitoring service for the candidate. 2021 Minnesota Laws, Chapter 31, Article 4 created a new noncampaign disbursement category by providing that a principal campaign committee may spend up to \$3,000 each two-year election cycle segment for security expenses for the candidate. The new noncampaign disbursement category for security expenses specifically identifies the cost of home security systems and identity theft monitoring services as permissible expenditures. The conclusion of the advisory opinion is clearly superseded by this statutory change.
- Advisory Opinion 454 provides that a political party unit may lease meeting space for use by elected members of the party and other individuals, including lobbyists, who pay a membership fee for use of the facility. The opinion was based largely on the fact that at the time of the opinion, the sessional contribution prohibition applied only to contributions solicited or received during the legislative session. A contribution received prior to the legislative session for access to a meeting space operated by a political party unit is a contribution to the political party, but was not a violation of the sessional contribution prohibition.

2023 Minnesota Laws, Chapter 62, Article 5 the prohibition on contributions during the legislative session from lobbyists and political committees was expanded to include contributions made before the legislative session begins in order to attend an event held by a candidate or legislative caucus party unit during the session, or to pay for membership in or access to a facility, operated by a candidate or legislative caucus party unit during the session. Given this change, the Board’s interpretation of the sessional contribution prohibition as used in this advisory opinion is no longer valid.

When the Board revokes an advisory opinion, staff notifies the requestor of the opinion that the opinion can no longer be relied on to guide their actions. The requestor must be allowed at least 30 days to take any steps needed because of the revoked opinion before the Board can

take any action against the requestor based on the facts of the advisory opinion. A revoked advisory opinion is also removed from the searchable database of advisory opinions on the Board's website.

Attachments

Advisory Opinion 383

Advisory Opinion 387

Advisory Opinion 428

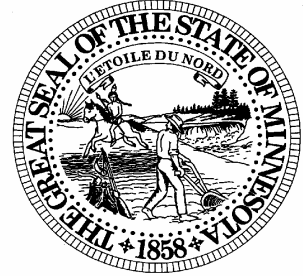
Advisory Opinion 443

Advisory Opinion 446

Advisory Opinion 454

Minnesota

Campaign Finance and Public Disclosure Board



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

RE: State Political Party Convention Expenses

ADVISORY OPINION 383

SUMMARY

Expenses for a candidate attending a state political party convention paid for by a principal campaign committee are reported as campaign expenditures.

FACTS

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

1. State legislators who are members of the Democratic Farmer Labor Party (DFL) are automatically accorded delegate status at the DFL state convention. State legislators who are members of the Republican Party of Minnesota (RPM) do not have automatic status as delegates to the RPM state convention, but are often elected to serve as a state delegate.
2. During a floor session of the Minnesota House of Representatives on May 20, 2006, a discussion occurred about using the funds in a principal campaign committee to pay the costs of a legislator attending a DFL or RPM state convention. Legislators who participated in the discussion indicated that they viewed the cost of attending a state political party convention as either a cost of serving in office or a constituent service, and therefore a noncampaign disbursement.
3. The political party endorsement for a legislative district occurs prior to the state political party convention.

ISSUE ONE

May a principal campaign committee that pays some or all of the registration, travel, meals, and lodging costs incurred by a member of the legislature to attend a political party state convention classify the costs as noncampaign disbursements?

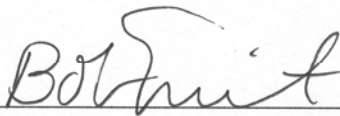
OPINION ONE

No. Minnesota Statutes, section 10A.01, subdivision 26, and Minnesota Rules 4503.0900 provide a list of expenses incurred by a principal campaign committee that may be classified as a noncampaign disbursement. Neither statute nor rule provides a category under which the costs associated with attending a political party state convention may be reasonably included.

The House of Representatives floor discussion included in the facts of this opinion suggested that because DFL legislators are automatically delegates to their party's state convention the cost of attending the DFL state convention were a "cost of serving in office"; a type of noncampaign disbursement under Minnesota Statutes, section 10A.01, subdivision 26 (9). In previous advisory opinions, (see Advisory Opinions 354, 346, and 314) the Board has limited the costs of serving in office that qualify as a noncampaign disbursement to those costs reasonably expected or required of all elected officials. Attending a state political party convention is an act to support a political party and the legislator's reelection campaign; it is not a cost of serving in office.

During the floor discussion it was also contended that the cost of attending a state political party convention was a service to constituents, and therefore a noncampaign disbursement. A state legislator who attends a state political party convention will likely find that some of the delegates are constituents. It does not follow that the cost of attending the convention is therefore "services for a constituent", a type of noncampaign disbursement provided in Minnesota Statutes, section 10A.01, subdivision 26 (6). A constituent service is a service provided to a member of the public because the legislator holds public office. Discussions held between delegates at a state convention occur because of shared political affiliation and goals. The fact that one of the delegates is a legislator does not make the conversation a constituent service.

Issued August 15, 2006



Bob Milbert, Chair
Campaign Finance and Public Disclosure Board

Cited Statutes and Administrative Rules

10A.01 Definitions.

Subd. 26. **Noncampaign disbursement.** "Noncampaign disbursement" means a purchase or payment of money or anything of value made, or an advance of credit incurred, or a donation in kind received, by a principal campaign committee for any of the following purposes:

- (1) payment for accounting and legal services;
- (2) return of a contribution to the source;
- (3) repayment of a loan made to the principal campaign committee by that committee;
- (4) return of a public subsidy;
- (5) payment for food, beverages, entertainment, and facility rental for a fund-raising event;
- (6) services for a constituent by a member of the legislature or a constitutional officer in the executive branch, including the costs of preparing and distributing a suggestion or idea solicitation to constituents, performed from the beginning of the term of office to adjournment sine die of the legislature in the election year for the office held, and half the cost of services for a constituent by a member of the legislature or a constitutional officer in the executive branch performed from adjournment sine die to 60 days after adjournment sine die;
- (7) payment for food and beverages consumed by a candidate or volunteers while they are engaged in campaign activities;
- (8) payment for food or a beverage consumed while attending a reception or meeting directly related to legislative duties;
- (9) payment of expenses incurred by elected or appointed leaders of a legislative caucus in carrying out their leadership responsibilities;
- (10) payment by a principal campaign committee of the candidate's expenses for serving in public office, other than for personal uses;
- (11) costs of child care for the candidate's children when campaigning;
- (12) fees paid to attend a campaign school;
- (13) costs of a postelection party during the election year when a candidate's name will no longer appear on a ballot or the general election is concluded, whichever occurs first;

- (14) interest on loans paid by a principal campaign committee on outstanding loans;
- (15) filing fees;
- (16) post-general election thank-you notes or advertisements in the news media;
- (17) the cost of campaign material purchased to replace defective campaign material, if the defective material is destroyed without being used;
- (18) contributions to a party unit;
- (19) payments for funeral gifts or memorials; and
- (20) other purchases or payments specified in board rules or advisory opinions as being for any purpose other than to influence the nomination or election of a candidate or to promote or defeat a ballot question.

The board must determine whether an activity involves a noncampaign disbursement within the meaning of this subdivision.

A noncampaign disbursement is considered made in the year in which the candidate made the purchase of goods or services or incurred an obligation to pay for goods or services.

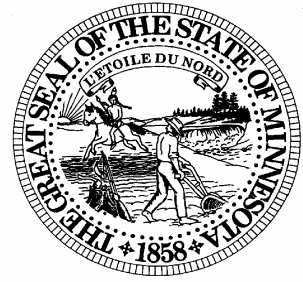
4503.0900 Noncampaign Disbursements.

Subpart 1. **Additional definitions.** In addition to those listed in Minnesota Statutes, section 10A.01, subdivision 26, the following expenses are noncampaign disbursements:

- A. transportation, meals, and lodging paid to attend a campaign school;
- B. costs of campaigning incurred by a person with a disability, as defined in Minnesota Statutes, section 363.01, subdivision 13, and which are made necessary by the disability;
- C. the cost to an incumbent or a winning candidate of providing services to residents in the district after the general election in an election year for the office held;
- D. payment of advances of credit in a year after the year in which the advance was reported as an expenditure; and
- E. payment of fines assessed by the board.

Minnesota

*Campaign Finance and
Public Disclosure Board*



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

RE: Costs of Credit Card Transactions

ADVISORY OPINION 387

SUMMARY

The costs of credit card transactions incurred as part of campaign fund raising activities are campaign expenditures, reportable as such, and not as “noncampaign disbursements” defined by Minnesota Statutes, section 10A.01, subdivision 26.

FACTS

As treasurer of a principal campaign committee (the Committee) registered with the Campaign Finance and Public Disclosure Board (the Board) you request an advisory opinion based on the following facts:

1. In campaign fund raising activities, the use of credit cards by donors has become common and their use can be expected to become still more common in the future.
2. Credit card transactions are processed by credit service bureaus which charge a fee for each transaction to pay for the service. The transaction cost occurs regardless of how the credit card number is communicated to the Committee (in writing, over the telephone, or over the Internet).
3. The Committee notes that the reporting of credit card processing fees by various candidates has been inconsistent, and that some other campaign related banking costs, such as check fees and automatic bill payment fees, are usually treated as noncampaign expenditures.

ISSUE ONE

Should the costs of credit card transactions incurred in fund raising activities be reported as noncampaign disbursements under Minnesota Statutes, section 10A.01, subdivision 26?


OPINION ONE

No. The board concludes that fees for credit card transactions are campaign expenditures, and should be reported as such under Minnesota Statutes, section 10A.20. Credit card transaction fees are not explicitly identified as a type of noncampaign disbursement under any clause of section 10A.01, subdivision 26. This statute does provide in clause (1) that a principal campaign committee's payments for accounting services are a noncampaign disbursement. Including credit card transaction fees as a type of accounting service would extend the range of clause (1) beyond its natural meaning.

Many costs related to raising funds for a principal campaign committee are campaign expenditures. For example, the cost of paper, printing, envelopes, postage, and hired fund raisers are all campaign expenditures. Credit card transaction fees, when incurred in connection with contributions to the committee, are another cost associated with fundraising, and should be categorized and reported as campaign expenditures.

The requestor notes that many principal campaign committees list bank service fees and check processing fees as noncampaign disbursements. The Board has not challenged this classification because all principal campaign committees are required to have a depository at the time of registration, and must deposit all contributions into that account. (Minnesota Statutes, sections 10A.14, subdivision 2, and 10A.15, subdivision 3). Because a banking account is required by statute the costs required to maintain that account are outside of a committee's discretion and may be reported as a noncampaign disbursement.

Issued September 15, 2006



Bob Milbert, Chair
Campaign Finance and Public Disclosure Board

Cited Statutes

10A.01 Definitions.

Subd. 26. **Noncampaign disbursement.** "Noncampaign disbursement" means a purchase or payment of money or anything of value made, or an advance of credit incurred, or a donation in kind received, by a principal campaign committee for any of the following purposes:

- (1) payment for accounting and legal services;
- (2) return of a contribution to the source;
- (3) repayment of a loan made to the principal campaign committee by that committee;
- (4) return of a public subsidy;
- (5) payment for food, beverages, entertainment, and facility rental for a fund-raising event;
- (6) services for a constituent by a member of the legislature or a constitutional officer in the executive branch, including the costs of preparing and distributing a suggestion or idea solicitation to constituents, performed from the beginning of the term of office to adjournment sine die of the legislature in the election year for the office held, and half the cost of services for a constituent by a member of the legislature or a constitutional officer in the executive branch performed from adjournment sine die to 60 days after adjournment sine die;
- (7) payment for food and beverages consumed by a candidate or volunteers while they are engaged in campaign activities;
- (8) payment for food or a beverage consumed while attending a reception or meeting directly related to legislative duties;
- (9) payment of expenses incurred by elected or appointed leaders of a legislative caucus in carrying out their leadership responsibilities;
- (10) payment by a principal campaign committee of the candidate's expenses for serving in public office, other than for personal uses;
- (11) costs of child care for the candidate's children when campaigning;
- (12) fees paid to attend a campaign school;

- (13) costs of a postelection party during the election year when a candidate's name will no longer appear on a ballot or the general election is concluded, whichever occurs first;
- (14) interest on loans paid by a principal campaign committee on outstanding loans;
- (15) filing fees;
- (16) post-general election thank-you notes or advertisements in the news media;
- (17) the cost of campaign material purchased to replace defective campaign material, if the defective material is destroyed without being used;
- (18) contributions to a party unit;
- (19) payments for funeral gifts or memorials; and
- (20) other purchases or payments specified in board rules or advisory opinions as being for any purpose other than to influence the nomination or election of a candidate or to promote or defeat a ballot question.

The board must determine whether an activity involves a noncampaign disbursement within the meaning of this subdivision.

A noncampaign disbursement is considered made in the year in which the candidate made the purchase of goods or services or incurred an obligation to pay for goods or services.

10A.14 Registration.

Subdivision 1. **First registration.** The treasurer of a political committee, political fund, principal campaign committee, or party unit must register with the board by filing a statement of organization no later than 14 days after the committee, fund, or party unit has made a contribution, received contributions, or made expenditures in excess of \$100.

Subd. 2. Form. The statement of organization must include:

- (1) the name and address of the committee, fund, or party unit;
- (2) the name and address of the chair of a political committee, principal campaign committee, or party unit;
- (3) the name and address of any supporting association of a political fund;
- (4) the name and address of the treasurer and any deputy treasurers;

(5) a listing of all depositories or safety deposit boxes used; and

(6) for the state committee of a political party only, a list of its party units.

10A.15 Contributions.

Subd. 3. **Deposit.** All contributions received by or on behalf of a candidate, principal campaign committee, political committee, political fund, or party unit must be deposited in an account designated "Campaign Fund of (name of candidate, committee, fund, or party unit)." All contributions must be deposited promptly upon receipt and, except for contributions received during the last three days of a reporting period as described in section 10A.20, must be deposited during the reporting period in which they were received. A contribution received during the last three days of a reporting period must be deposited within 72 hours after receipt and must be reported as received during the reporting period whether or not deposited within that period. A candidate, principal campaign committee, political committee, political fund, or party unit may refuse to accept a contribution. A deposited contribution may be returned to the contributor within 60 days after deposit. A contribution deposited and not returned within 60 days after that deposit must be reported as accepted.

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

**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: Definition of express advocacy

ADVISORY OPINION 428

SUMMARY

Under Chapter 10A an association other than a principal campaign committee, party unit, or political committee, is not required to register and provide disclosure of communications naming candidates unless those communications use words of express advocacy.

FACTS

As the attorney for an association (the Association), 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 Association is a nonprofit corporation that is exempt from federal income taxation under section 501(c)(4) of the Internal Revenue Code (IRC).
2. The Association engages in activities, including public communications, to promote its positions on various federal public policy issues.
3. The Association relies on voluntary donations from others to support its activities.
4. The Association is considering conducting similar activities in Minnesota that will focus on state public policy issues.
5. The Association is considering whether to engage in Minnesota communications itself or to form a separate corporation for that purpose, which it assumes would also be exempt from federal taxation under IRC section 501(c)(4).
6. The Association or the new association intends to communicate with members of the Minnesota general public through mass media communications to advance state public policy issues.
7. These communications may refer to incumbent officeholders or candidates for state office.
8. The communications will not use words such as "vote for," "defeat," or "reelect."
9. The communications will not be coordinated with any of the identified candidates or their opponents.

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

Question

If an association avoids using in its communications the explicit words of express advocacy such as "vote for," "elect," "vote against," "defeat," and similar words, and avoids coordination with candidates, is the association excluded from classification as a political committee or as an association with a political fund and, thus, exempt from the registration and reporting requirements of Chapter 10A?

Opinion

The hypothetical facts state that both the existing association and a new association formed to engage in communications in Minnesota would be a 501(c)(4) tax exempt organizations. Based on Internal Revenue Code provisions, this means that the major purpose of either association is something other than to influence the nomination or election of candidates in Minnesota. Therefore, the Association will not be a political committee regardless of its communications because a political committee is, by definition, an association whose major purpose is to influence the nomination or election of candidates or to promote or defeat a ballot question.

If the Association is required to provide disclosure, it will be through a political fund account. A political fund is defined in Minnesota Statutes section 10A.02, subdivision 28, as

an accumulation of dues or voluntary contributions by an association other than a political committee, principal campaign committee, or party unit, if the accumulation is collected or expended to influence the nomination or election of a candidate or to promote or defeat a ballot question.

Under both U.S. Constitutional law in *Buckley v. Valeo* 424 U.S. 1 (1976) and under Minnesota law in *Minnesota Citizens Concerned for Life v. Kelley*, 698 NW2d 424 (Minn. 2005), the phrase "to influence" has been narrowly construed in the case of associations that are not political committees to be limited to communications that expressly advocate to influence the nomination or election of candidates.¹

Subsequent to *Buckley*, the U.S. Supreme Court opinions, including those of *McConnell v. FEC* 540 U.S. 93 (2003) and *FEC v. Wisconsin Right To Life (WRTL)* 551 U.S. 449 (2007), have held that communications that were the "functional equivalent" of express advocacy could also trigger disclosure requirements as communications to influence the nomination or election of candidates. Communications that are the functional equivalent of express advocacy are those that are subject to no reasonable interpretation other than that their purpose is to influence the nomination or election of candidates or to promote or defeat a ballot question.

In Minnesota, both independent expenditures, as a type of communication, and political funds, as an accumulation of money, are defined in terms of express advocacy.

¹ The Board recognizes that an association that advocates to promote or defeat a ballot question may also be required to provide disclosure through a political fund account. However, questions concerning registration and disclosure of ballot question political funds are not before the Board in this request.

The question, then, is whether express advocacy relative to candidates includes only communications using the magic words of *Buckley* (or similar words) or does it also include communications that are subject to no reasonable interpretation other than that their purpose is to influence the nomination or election of candidates?

The Board reviewed the relevant Chapter 10A provisions in detail in the *Matter of the Complaint of Novack Regarding Minnesota Majority (Minnesota Majority)* (Board Findings and Order, December 3, 2008). In that matter, the Board concluded that under Chapter 10A, "[e]xpress advocacy requires use of specific words such as "vote for", "elect", "defeat" or similar words.

At the time the Board considered *Minnesota Majority*, the FEC rule was being challenged in Federal Court in a matter titled *The Real Truth About Obama v. FEC*. That matter was eventually heard on its merits by the United States District Court for the Eastern District of Virginia which upheld the constitutionality of the FEC rule. A three judge panel of the U.S. Court of Appeals for the Fourth Circuit recently upheld the District Court's ruling. (Court file 11-1760, Opinion issued June 12, 2012.) However, the three-judge appellate court ruling is still subject to possible review by the full panel of the Court of Appeals or by the Supreme Court.

In any event, an expanded interpretation of express advocacy should be promulgated through the rulemaking or legislative process rather than through the advisory opinion process. Minnesota Statutes section 10A.02, subdivision 12a states that if the Board wishes a principal of law to be of general application, it must adopt that principal through administrative rulemaking.

In view of the legal uncertainty and the limits of its advisory opinion authority, the Board will not modify the conclusion that it reached in *Minnesota Majority*. A communication naming candidates that is made independently from the candidates and does not use words of express advocacy is not subject to disclosure under Chapter 10A and will not trigger a registration requirement for the association publishing the communication.

Dated: August 7, 2012

/s/ Greg McCullough

Greg McCullough, Chair
Campaign Finance and Public Disclosure Board

**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: Nancy Hylden
Hylden Advocacy & Law
310 4th Avenue South, Suite 5010
Minneapolis, MN 55415

RE: Amendment of a Principal Campaign Committee registered under Chapter 383B

ADVISORY OPINION 443

SUMMARY

A principal campaign committee registered under the provisions of Minnesota Statutes Chapter 383B may amend its registration to reflect the office to which the candidate currently seeks election.

FACTS

As the legal representative of Jacob Frey, a candidate for elective office in Minneapolis, you requested an advisory opinion from the Campaign Finance and Public Disclosure Board based on the following facts that were provided in the letter requesting the advisory opinion and in discussions with Board staff.

1. Jacob Frey currently represents Ward 3 on the Minneapolis City Council. Mr. Frey registered the principal campaign committee Jacob Frey for Our City in October of 2012. The committee is currently registered with Hennepin County for the office of council member.
2. Mr. Frey has announced that he is a candidate for the office of Mayor of Minneapolis. Mr. Frey does not intend to seek reelection to his city council seat, which would be on the same ballot as the mayoral race.
3. Mr. Frey wishes to amend the existing Jacob Frey for Our City committee so that it will be the principal campaign committee for his candidacy for Mayor of Minneapolis. The amendment will change the office of record for the committee from city council to mayor.
4. If Mr. Frey may amend the committee registration, the funds currently in the Jacob Frey for Our City bank account will be used to support his mayoral campaign.

INTRODUCTION

Typically, the Board does not issue advisory opinions for municipal office candidates. However, the Board is authorized to issue an advisory opinion on the facts listed above by Minnesota Statutes section 383B.055, subdivision 1, which provides, in part:

The state Campaign Finance and Public Disclosure Board shall:

(1) issue and publish advisory opinions concerning the requirements of sections 383B.041 to 383B.057 upon application in writing by the county filing officer of Hennepin County or any individual or association who wishes to use the opinion to guide the applicant's own conduct.

Sections 383B.041 to 383B.057 apply to county elections in Hennepin County; for city elections in home rule charter cities and statutory cities located wholly within Hennepin County, having a population of 75,000 or more; and for school board elections in Minneapolis School District No. 1. Elections to offices in the City of Minneapolis fall within the scope of these sections.

The Board's authority to provide an advisory opinion under Minnesota Statutes section 383B.055, subdivision 1, parallels the Board's authority under Minnesota Statutes section 10A.02, subdivision 12.

When the Board issues an advisory opinion on the provisions of Chapter 10A it applies a statutory rule that requires meaning be given to each word or phrase used in a statute. Further, the Board will not place a restriction on a candidate's ability to seek election to an office unless it is clear that the legislature intended for some regulation to exist. The Board will apply the same principals when asked for an advisory opinion on chapter 383B.

ISSUE

May the candidate amend his principal campaign committee's registration from the office of city council to the office of mayor?

OPINION

There are two provisions in chapter 383B relevant to this question. Minnesota Statutes, section 383B.042, subdivision 16, defines a candidate's committee when it provides, in part:

"Principal campaign committee" means *the single political committee designated by a candidate for election for any city office in...the city of Minneapolis;...* [Emphasis added]

The registration of a principal campaign committee is provided in Minnesota Statutes, section 383B.045:

Every candidate who receives contributions or makes expenditures in excess of \$100 *shall designate and cause to be formed a single political committee* which shall be known as the candidate's principal campaign committee...[Emphasis added]

The statutes do not require a candidate to establish a separate principal campaign committee for each office sought or held.¹ Instead, both statutes give the candidate authority to establish and register a single committee for any office in the city of Minneapolis as designated by the candidate. Further, neither statute indicates a requirement or provides a procedure for a candidate to terminate

¹ In contrast, Minn. Stat. §10A.105, states that a candidate for state level office must not raise more than \$750 "unless the candidate designates and causes to be formed a single principal campaign committee *for each office sought. . .*" [Emphasis added.] The legislature provided specific and clear language when it wanted to require a candidate to register a separate principal campaign committee for each office sought. No similar language exists in chapter 383B.

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(c)**

RE: Use of principal campaign committee funds to pay for the cost of home security systems and protection against identity theft.

ADVISORY OPINION 446

SUMMARY

Principal campaign committee funds may not be used to pay for the cost of a home security system or for a subscription to an identity theft monitoring service.

FACTS

As a member of the Minnesota legislature, you ask the Campaign Finance and Public Disclosure Board for an advisory opinion. Your request is based on the following facts:

1. You state that in the present political climate candidates and elected officials face heightened risks to physical security. You note that there have been occasions when protests occurred outside of the homes of elected officials.
2. You also state that there is a heightened risk to digital security, and note that news stories on identity theft are common.

Question

May principal campaign committee funds be used to pay for equipment such as security cameras, monthly home security subscription fees, and identity theft monitoring subscription services?

Opinion

Minnesota Statutes section 211B.12 limits the use of money collected by a candidate's principal campaign committee to activities that are for "political purposes," which means to influence the voting at an election. An exception to this requirement is that principal campaign committee funds may also be used for the noncampaign disbursements defined in Minnesota Statutes section 10A.01, subdivision 26.

The Board does not believe that expenditures related to home and identity security as stated in the request would qualify as a political purpose. This opinion therefore will focus on whether the expenditures may be paid for as a noncampaign disbursement.

One of the defined noncampaign disbursements is Minnesota Statutes, section 10A.01, subdivision 26 (10), which provides that committee funds may be used for the following expense:

payment by a principal campaign committee of the candidate's expenses for serving in public office, other than for personal uses.

On previous occasions when the Board has reviewed expenditures for approval as an expense of serving in public office, it has required a direct connection between serving in office and the requested expenditure. Advisory Opinion 255. The Board has also found that the disbursements must be for "...reasonable expenses of those activities that are expected or required of a public official or that enhance the official's ability to serve." Advisory Opinion 314. Service in office does not include activities or expenditures that are only indirectly related to holding office, and which provide a personal benefit to the office holder. Advisory Opinions 314, 411.

The widespread availability of commercial services for home security and identity theft monitoring shows that there is broad general demand for these services. Providing additional security for one's residence, or for one's own identity, clearly provides personal benefits to the purchaser. It is speculative to conclude that an elected official has a greater need for home security services and identity theft monitoring than the general population, or that the need is directly related to service in office. Further, the Board cannot determine that the need for the services would cease to exist if the requester were not in office.

The Board therefore concludes that principal campaign committee funds may not be used to pay for home security systems or identity theft monitoring as an expense of serving in office.

Dated: May 2, 2018

_____/s/ Carolyn Flynn_____
Carolyn Flynn, Chair
Campaign Finance and Public Disclosure Board

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

**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)**

ADVISORY OPINION 454

SUMMARY

A political party unit may lease meeting space for use by elected members of the party and other individuals who pay a membership fee for use of the facility. The payment of a membership fee is a contribution to the party unit. The value of the facility may, in part, constitute in-kind contributions to the campaign committees of elected members.

Facts

As a representative of a registered political party unit (the party unit), you ask the Campaign Finance and Public Disclosure Board for an advisory opinion based on the following facts which were provided to the Board in a written request and through conversations with Board staff.

1. The party unit holds events for its members during the legislative session. Finding a location to hold these events, and for informal meetings by members, has been complicated by the pandemic and its related restrictions on the use of public space and the limited availability of private space.
2. The party unit intends to lease space for use by the party unit, elected members of the party, staff, and invited guests during the legislative session. The party unit will pay fair market value for use of the space.
3. The party unit views the cost of meeting space for its activities and its members as an expenditure for “office and other space” that supports the political purpose of re-electing its members.¹ The space will be used, in part, to support the development of legislation that supports the party’s political agenda. Passage of legislation and development of policies that are in line with the party’s goals will directly support the election of party candidates.
4. The leased space will not be open to the general public. In order to use the facility elected members of the party will be required to pay a membership fee that is specifically for access to the facility. The amount of the membership fee has not been

¹ Minnesota Statutes section 211B.12 listing permitted uses of funds collected for political purposes.

determined, but any fees collected will be used for the party unit's administrative costs. The party unit does not intend to pay for the lease of the facility through the membership fees paid by elected members of the party.

5. The party unit will offer limited memberships to individuals who are not elected office holders. The limited memberships will provide access to use the facility, but will not provide any other rights or duties within the party unit. Limited memberships will be offered at the discretion of the party unit. The cost of a limited membership may be greater than the membership fee for elected members of the party unit.
6. The party unit will not allow candidates to hold fundraisers at the facility during the legislative session.
7. Food and beverages will be available for purchase at the meeting facility at fair market value. Members will be responsible for the purchase of any food or beverage items for themselves or guests.
8. The party unit and its elected members are aware of and comply with the prohibition on contributions from lobbyists during the legislative session. See Minn. Stat. § 10A.273.
9. The party unit and its elected members are aware of and comply with the gift prohibition between lobbyists and public officials. See Minn. Stat. § 10A.071.

With this background in mind, the party unit asks the following questions.

Issue One

Does providing elected members with a meeting space result in a contribution from the party unit to the elected members which must be reported to the Board?

Opinion One

Yes. Minnesota Statutes section 10A.01, subdivision 4, defines an approved expenditure as follows:

“Approved expenditure” means an expenditure made on behalf of a candidate by an entity other than the principal campaign committee of the candidate, if the expenditure 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 the candidate, the candidate’s principal campaign committee, or the candidate’s agent. An approved expenditure is a contribution to that candidate.

Minnesota Rules part 4503.0800, subpart 4, further provides, “The fair market value of shared office space or services provided to a candidate without reimbursement is a donation in kind.”

As described in the facts of the request, the membership fees paid by elected members will be applied against the administrative overhead of the party unit, and will not pay for the cost of the meeting space. For elected members, the value of the use of the facility is an approved expenditure by the party unit (a type of donation in kind) on behalf of those candidates. By definition, an approved expenditure is a contribution to the elected member's campaign committee.

The approved expenditure for use of the meeting facility is a contribution from a political party unit, and will count against the aggregate political party unit limit of the elected member's campaign committee. Because the approved expenditure counts against the political party contribution limit, if the value of the approved expenditure exceeds \$20 an elected member's campaign committee must provide a written acknowledgement to the party unit of the donation and authorizing the approved expenditure at a set amount.²

In determining the value of the meeting facility to elected members the party unit should subtract from the cost paid for the leased space and any associated costs for operating the facility the value to the party unit of holding its meetings at the location. The remaining cost is a benefit that then would be allocated among the members.

The party unit will report the value of the use of the facility as a contribution to the elected members' campaign committees. The donation will be itemized if the value of the membership is over \$200, or if the value of the membership combined with any other donation made by the party unit to the elected member during the calendar year exceeds \$200. The elected member will also report the donation in kind from the party unit on the schedule for party unit contributions, again itemizing the contribution if the value is over \$200 either individually or in aggregate with other contributions from the party unit. A donation in kind is also reported as either a campaign expenditure or a non-campaign disbursement during the same reporting period in which it is received.³

Issue Two

Does the purchase of a limited membership by a non-elected individual result in a contribution to the party unit?

Opinion Two

Yes. The membership dues are payments for services provided by the party unit, and the party unit is free to use the membership dues for any political purpose. The payment of dues, regardless of whether paid for by an elected or limited member, will be reported as contributions during the reporting period in which the payment is received. Itemization of the donation will occur if the member's dues exceed \$200 in a calendar year, or if the dues in combination with other contributions to the party unit exceed \$200 during the calendar year.

² Minnesota Statutes section 10A.17, subdivision 2

³ Minnesota Statutes section 10A.20, subdivision 3, (c) and (h)

The Board notes that Minnesota Statutes section 10A.271 provides that a political party unit that sells goods or services must provide notice to the purchaser that the payment for the item is a political contribution.

Issue Three

If a limited membership is purchased by a registered lobbyist prior to the beginning of the legislative session, will use of the membership during the session result in a violation of the sessional contribution prohibition?

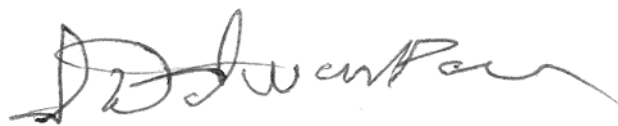
Opinion Three

No. The sessional contribution prohibition applies only to soliciting or accepting a contribution from a registered lobbyist during a regular session of the legislature. A “regular session” starts at 12:00 a.m. on the first day of each annual session and ends at 11:59 p.m. on the last day of each annual session.⁴

Although access to the meeting facility will be provided during a regular legislative session, the contribution occurs when payment of the membership dues is physically received by the party unit, or if the party unit accepts payment of membership dues through electronic means, on the date when the lobbyist makes the contribution.⁵

Lobbyists who purchase limited memberships should do so with personal funds. If the association that the lobbyist represents directly pays for the membership, or reimburses the lobbyist for the membership dues, the result will either be a prohibited corporate contribution to the party unit,⁶ or a contribution from an unregistered association that may require underlying disclosure of the source of funds used to pay the membership dues.⁷

Issued: October 6, 2021



Stephen Swanson, Chair
Campaign Finance and Public Disclosure Board

⁴ Minnesota Statutes section 10A.273, subdivision 3

⁵ Minnesota Statutes section 10A.15, subdivision 2a, paragraphs (b), (c)

⁶ Minnesota Statutes section 211B.15, subdivision 2

⁷ Minnesota Statutes section 10A.27, subdivision 13



MINNESOTA CAMPAIGN FINANCE BOARD

Date: June 29, 2023

To: Board members
Nathan Hartshorn, counsel

From: Andrew Olson, Legal/Management Analyst **Telephone:** 651-539-1190

Subject: Rulemaking – Proposed topics, request for comments, and authorizing resolution

Rulemaking Feedback

On June 7, 2023, the Board voted to proceed with administrative rulemaking. Shortly thereafter a memorandum describing the Board's intent to pursue rulemaking and soliciting public feedback regarding the topics to be addressed was published on the Board's website. Emails containing a link to the memorandum and soliciting feedback were sent to each of the following individuals who are registered with the Board:

- Treasurers and candidates of principal campaign committees;
- Treasurers and chairs of political party units and political committees and funds; and
- Lobbyists.

The Board received feedback from five individuals as well as the Minnesota Governmental Relations Council (MGRC). The feedback received from individuals is summarized below.

- One individual suggested that the Board establish clear rules regarding disclaimers on campaign material disseminated via social media. This suggestion has been incorporated within the list of topics within the draft request for comments.
- One individual stated that unpaid lobbyists should be treated differently than paid lobbyists. Currently, under Minnesota Statutes section 10A.01, subdivision 21, an unpaid lobbyist is defined as a lobbyist only if the individual spends more than \$250 on lobbying within a calendar year, excluding their travel expenses and membership dues. Effective January 1, 2024, the threshold for personal spending that requires registration as a lobbyist will increase to \$3,000. This statutory change should reduce the number of individuals who are required to register and report as a lobbyist even though they are not compensated for lobbying. Also, the Board cannot adopt rules that conflict with the registration and reporting requirements for lobbyists provided in Chapter 10A.

- One individual suggested that the Board increase the maximum amount for an anonymous contribution that may be retained by the recipient, in order to decrease the extent to which treasurers are required to obtain the name and address of individuals who make small contributions. This issue was discussed by the Board earlier this year. Minnesota Statutes section 10A.13, subdivision 1, provides that a treasurer must keep an account of “the name and address of each source of a contribution made to the committee, fund, or party unit in excess of \$20” and Minnesota Statutes section 10A.15, subdivision 1, provides that a treasurer “may not retain an anonymous contribution in excess of \$20, but must forward it to the board for deposit in the general account of the state elections campaign account.” While those provisions have been a source of frustration for some campaign finance filers and may be an issue for the legislature to consider in the future, the Board cannot adopt rules that conflict with Chapter 10A.
- One individual stated that it would be helpful if principal campaign committees and political committees and funds were alerted to 24-hour large contribution notice violations as soon as possible to avoid the accrual of a large late filing fee. The problem is that if a 24-hour large contribution notice is not filed, the Board is generally not aware of the contribution necessitating the filing of the notice until it is disclosed within a periodic report of receipts and expenditures, which often occurs after the maximum late filing fee of \$1,000 has already accrued. Unfortunately, rulemaking is unlikely to improve the situation as the Board cannot alert treasurers of the need to file individual 24-hour large contribution notices without being aware of the underlying contributions necessitating those notices.
- One individual offered feedback regarding two separate issues. First, the individual stated that the Board should not be involved in Hennepin County elections. Following legislative changes made in 2021, the Board became responsible for regulating entities that seek to influence the nomination or election of a “local candidate” within Hennepin County, as defined by Minnesota Statutes section 10A.01, subdivision 10d, or seek to promote or defeat certain local ballot questions within Hennepin County. Again, the Board cannot adopt rules that conflict with Chapter 10A.

Second, the individual stated that they do not feel that the Board “understands how restrictive banks have become. It has become harder and harder to open a campaign or party unit account. The banks want to see documentation from the Secretary of State’s office, even if filing hasn’t opened yet.” Difficulty faced by campaign finance filers while seeking to open a bank account has become an increasingly widespread problem. The Board is aware of the issue and has published information on its website regarding when a bank account must be opened, the required name of the account, and how to obtain a federal tax ID number, which is required to open an account. The Board has published a notice to financial institutions explaining that campaign finance filers typically lack documentation issued by a government entity regarding their existence, they are typically not required to register as a business or nonprofit organization with the Office of the Minnesota Secretary of State, and they typically are not required to file forms with the IRS beyond requesting a federal tax ID number. Board staff has also worked with individual campaign finance filers and financial institutions to seek to resolve issues

related to opening a bank account and has been flexible in allowing filers to register with the Board prior to opening a bank account when financial institutions have required that registration in order to open the account. Unfortunately, rulemaking is unlikely to improve the situation because the Board cannot compel financial institutions to alter the documentation they require in order to open a depository account.

The MGRC offered feedback regarding the following specific aspects of the legislative changes made to the lobbying program in 2023, which will take effect in 2024.¹ That feedback is attached to this memorandum and is summarized below.

- The term “legislative action” has been defined to include “the development of prospective legislation, including the development of amendment language to prospective legislation.” This definition will be codified at section 10A.01, subdivision 19a. The MGRC states that it is “not clear whether this includes activity coordinated through trade organizations.”
- The term “official action of a political subdivision” has been defined to include “an action by an appointed or employed local official to make, to recommend, or to vote on as a member of the governing body, major decisions regarding the expenditure or investment of public money.” This definition will be codified at section 10A.01, subdivision 26b. The MGRC states that the term “major decision” is vague.
- The provision regarding the content of lobbyist reports has been amended to state that a “lobbyist must describe a specific subject of interest in the report with enough information to show the particular issue of importance to the entity represented.” That language will be codified at section 10A.04, subdivision 4, paragraph (b). The MGRC would like more details as to what will be considered “enough information.”
- Lobbyist principal reports have been required to include the total amount spent on lobbying, including in relevant part, amounts spent on advertising, mailing, research, analysis, compilation and dissemination of information, and public relations campaigns. Section 10A.04, subdivision 6, paragraph (c), clause (2) has been amended to add to that list amounts spent on consulting, surveys, expert testimony, studies, reports, social media campaigns, and legal counsel used to support lobbying. The MGRC seeks clarification as to whether that list includes amounts spent on studies, reports, and surveys by a trade organization in which a lobbyist principal is a dues-paying member, rather than by the principal directly. The MGRC suggests that the “reasonable good faith estimate” language used in section 10A.04, subdivision 6, paragraph (c), clause (3), could also be applied to the language in clause (2).

Proposed Topics

With one exception, Board staff recommends pursuing the rulemaking topics listed within the materials considered by the Board during its June meeting. Because the conclusion reached in

¹ See [2023 Minn. Laws ch. 62, art. 5](#).

Advisory Opinion 450 was so specific to a particular fact pattern, Board staff is no longer recommending that the Board adopt a rule establishing the circumstances under which a principal campaign committee may pay for costs related to the operation of a legislative caucus. Additionally, Board staff recommends pursuing the adoption of rules regarding disclaimers on campaign material disseminated by social media. The recommendations from the MGRC can be considered as part of the larger review of administrative rules regulating lobbyist registration and reporting recommended by staff.

During the June Board meeting there was discussion about whether the Board should pursue rulemaking now regarding each of the proposed topics, or whether the Board should pursue a smaller number of topics in anticipation of pursuing rulemaking again in the near future. Administrative rulemaking requires the commitment of considerable resources and much of that commitment is fixed, meaning that the resources committed are not greatly increased or decreased depending on the rulemaking topics being pursued. For that reason, and because we are not currently in a state election year, Board staff feel that it would be best to pursue most if not all of the proposed rulemaking topics now and hopefully avoid having to pursue rulemaking again within the next few years.

Draft Request for Comments and Authorizing Resolution

Attached to this memorandum are a draft request for comments and a draft resolution authorizing publication of the request for comments. The draft request for comments lists the proposed rulemaking topics. Most of the proposed topics concern the campaign finance program. There are also proposed topics that impact the lobbyist program, filing of reports electronically, the gift ban, and audits and investigations.

Publication of the request for comments is the beginning of the formal rulemaking process. Following publication of the request, the Board will receive comments from the regulated community and members of the public. After the close of the initial comment period, the Board will likely draft the proposed rule language, then issue a notice of its intent to hold one or more hearings regarding the proposed rules. After finalizing the language for the proposed rules, the Board will need to develop and publish a statement of need and reasonableness (SONAR) for the rules. The Board may elect to issue what is known as a dual notice, whereby the Board will hold a public hearing if at least 25 persons request a hearing, and otherwise will seek to adopt its proposed rules without a public hearing. However, it is likely that if a dual notice is issued, at least 25 persons will request a hearing, and staff believes it will be beneficial to hold a public hearing regardless of whether that threshold is met.

Attachments:

List of possible rulemaking subjects presented at June 7, 2023, Board meeting
MGRC feedback
Draft request for comments
Draft resolution authorizing request for comments

Advisory Opinions that contain conclusions appropriate for administrative rules

Some advisory opinions are based on facts that are so specific that it would be difficult if not inappropriate to establish a rule based on the conclusions of the opinion. The following are advisory opinions issued that are based on facts that are generally applicable to the regulated community. Most of the opinions were issued within the last ten years, or are opinions that are regularly referenced by staff to answer a question.

Advisory Opinions 452 and 436 provide guidelines to ensure that joint purchases of goods or services by candidate committees, party units, and political committees results in fair distribution of costs and benefits and does not result in an in-kind contribution between the committees that jointly purchase an item.

Advisory Opinion 450 provides that a principal campaign committee may pay for certain costs related to the operation of a legislative caucus if those costs qualify as a noncampaign disbursement.

Advisory Opinion 447 provides that the source of funding used by an unregistered association to make contributions must be considered before the contribution may be accepted by a committee registered with the Board. This advisory opinion is focused on contributions from committees and funds registered with the Federal Election Commission, but contains conclusions that have wider application.

Advisory Opinion 445 provides that informational material may be provided to a public official by a principal without violating the gift prohibition if the principal had a significant role in the creation, development, and production of the information.

Advisory Opinions 224, 297, and 441 provide that state agencies and local governmental units are not lobbyist principals. Apparently, this question is recurring and could be answered on a wider basis in administrative rule.

Advisory Opinions 319, 369, and 434 consider whether a company that provides internet-based processing of contributions for registered committees is providing a contribution to those committees, or if the company needs to register as a political committee or fund. The conditions needed to ensure that the company is providing a bona fide business service could be stated in rules. This would also be an opportunity to reconsider the conclusion in Advisory Opinion 434 that a donor may pay the processing fee for a contribution made online and the processing fee does not result in a contribution to the recipient committee.

Advisory Opinions 89, 127, 209, 211, and 228 all address the question of how to report an equipment purchase by a principal campaign committee. Minnesota Rules 4503.0900 could be modified to provide that the purchase of durable equipment or electronics, such as a computer, fax machine, printer/copier, cellphone, etc., is a campaign expenditure, rather than a noncampaign disbursement, unless the equipment is used solely to provide constituent services, is equipment used while campaigning by a person with a disability, or is home security hardware.

Existing administrative rules that could be updated and clarified.

Minnesota Rules 4501.0100 and 4501.0200 – update sections on “electronic filing system” and the signature requirement for electronic filing to reflect the current online reporting system operated by the Board.

Minnesota Rules 4503.0100 – add a definition of “county office in Hennepin County” that includes the offices of county commissioner, county attorney, and sheriff. This would help with the reporting required by party units, political committees, and political funds of contributions and independent expenditures to influence elections in Hennepin County.

Minnesota Rules 4503.0100 – add a definition for “nomination”. Chapter 10A makes multiple references to the “nomination or election” of a candidate without specifying what the term nomination means.

Minnesota Rules 4503.0200, subpart 5 – this subpart is partially obsolete. Specifically, the text “when notice required under subpart 4 is filed or” should be deleted because subpart 4 was repealed in 2005.

Minnesota Rules 4503.0800, subparts 2-4 – these subparts are partially obsolete. Specifically, in subpart 2 the phrase “multiple candidates” should be changed to “multiple candidates or local candidates” and in subparts 3 and 4 each instance of the word “candidate” should be changed to “candidate or local candidate”. This change is needed because Minnesota Statutes section 10A.01, subdivisions 4 and 11, were amended in 2021 to alter the definitions of the terms approved expenditure and contribution to be inclusive of a local candidate. The term local candidate is defined by Minnesota Statutes section 10A.01, subdivision 10d, to include certain candidates for local office within Hennepin County. A similar problem exists in Minnesota Rules 4503.1000 which can be resolved by updating “candidates” to “candidates or local candidates.”

Minnesota Rules 4503.0900, subpart 1 – add a new noncampaign disbursement category for costs required to maintain a bank account that is required by statute, including service fees, the cost of checks, and check processing fees.

Minnesota Rules 4503.0900 – add a new subpart stating that the purchase of durable equipment or electronics, such as a computer, fax machine, printer/copier, cellphone, etc., is a campaign expenditure, rather than a noncampaign disbursement, unless the equipment is used solely to provide constituent services, is equipment used while campaigning by a person with a disability, or is home security hardware. This would effectively codify Advisory Opinions 89, 127, 209, 211, and 228.

Minnesota Rules 4511.0500, subpart 1 – this subpart is partially obsolete. Specifically, the text “subpart 2” should be changed to “Minnesota Statutes section 10A.04, subdivision 9” because subpart 2 was repealed and replaced by section 10A.04, subdivision 9, in 2017.

Minnesota Rules 4525.0200, subpart 2 – modify the text to clearly only require the authorized representative’s mailing address, rather than the complainant’s address, if a complaint is signed by an individual authorized to act on behalf of the complainant. The rule would not permit anonymous complaints but would clarify that a complainant may provide their authorized representative’s mailing address rather than their personal mailing address.

Potential New Rules

If Board members have other subjects they would like to see addressed in administrative rules please bring them up during the discussion of this section.

Provide that a treasurer may group expenses together within campaign finance reports on a monthly basis so long as the expenses are for the same goods or services, from the same vendor, and all expenses incurred within a particular reporting period are disclosed through the end of that period. For example, a committee's payment processing fees withheld by ActBlue or WinRed may be grouped together within a calendar month, rather than having to enter every individual fee.

Provide procedures for the Board to use when conducting random audits of registered committees, funds, party units, and candidates. Similarly, establish procedures and criteria for the Board to use when conducting an audit that is not random, but rather based on indications that inaccurate information has been reported to the Board.

Establish procedures and criteria for use in the audit of affidavits of contributions submitted to qualify for a public subsidy payment.

Establish criteria required in order for the candidate to be deemed not responsible for the actions of a vendor or a subcontractor of a vendor hired by the candidate's committee, such as when the actions of a vendor or subcontractor unintentionally result in coordinated expenditures.

Review Minnesota Rules, Chapter 4511, which provides procedures for lobbyist registration and reporting, to ensure that the rules are still applicable given the changes made to the lobbyist program at the 2023 legislative session.

From: [Amy Walstien](#)
To: [CFBEmail](#)
Subject: Campaign Finance Board Request for Public Comments
Date: Monday, June 26, 2023 5:03:44 PM

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Dear Members of the Minnesota Campaign Finance Board:

The Minnesota Governmental Relations Council (MGRC) serves Government Relations Professionals by providing advocacy, professional development, networking, and an enhanced working experience inside and outside the Capitol.

On behalf of the MGRC Board of Directors, we would like to express our appreciation to Executive Director Jeff Sigurdson for collaborating with the Minnesota Governmental Relations Council as legislation impacting our industry moved through the legislature.

During conversations with Mr. Sigurdson, the MGRC Board offered to continue to collaborate with the Campaign Finance Board to shape the “general lobbying categories” required by the new law.

Additionally, it is MGRC’s goal to ensure our members are well-informed of reporting changes, and to that end we have been discussing ways that MGRC can assist with efforts to educate lobbyists of upcoming changes.

With regard to the new disclosure and reporting requirements, our members are starting to ask questions and seek clarity on various aspects of the new statutes.

For example, we recently asked MGRC members for input on rulemaking suggestions and received several items about which clarification would be helpful (see Appendix).

Many of these questions may be answered during the implementation phase as the Campaign Finance Board produces guides and answers questions. However, it is unclear at this point which questions may rise to a level requiring rulemaking changes to Chapter 4511.

MGRC is ready to assist with fielding questions and continued collaboration with the Campaign Finance Board.

Thank you.
Amy Walstien
MGRC Treasurer

APPENDIX

Section 4, 10A.04

The definition of legislative action includes “development of prospective legislation” and “development of amended language.”

Comment: It’s not clear whether this includes activity coordinated through trade organizations? Ideally it excludes that; it would be helpful to clarify scope on whether that’s reportable activity.

Section 7, 10A.04

This section states: “Official action of a political subdivision” means any action that requires a vote or approval by one or more elected local officials while acting in their official capacity; or an action by an appointed or employed local official to make, to recommend, or to vote on as a member of the governing body, major decisions regarding the expenditure or investment of public money.

Comment: the term “major decision” is vague. It would be helpful to have more clarity on what that means (e.g., would an award of a contract for investment management services fall under this definition, is there a monetary threshold to consider?)

Section 16, 10A.04

Amended Subdivision 4, on Content, states:

(a) A report under this section must include information the board requires from the registration form and the information required by this subdivision for the reporting period.

(b) A lobbyist must report the specific subjects of interest for an entity represented by the lobbyist on each report submitted under this section. A lobbyist must describe a specific subject of interest in the report with enough information to show the particular issue of importance to the entity represented.

Comment: It would be helpful to have more details on what is considered “enough information” for this report

Section 17, 10A.04

The amended Subdivision 6, on Principle reports, section (c) States:

For each type of lobbying listed in paragraph (b), the principal must report ~~under this subdivision~~ a total amount that includes:

(1) the portion of all direct payments for compensation and benefits paid by the principal to lobbyists in this state for that type of lobbying;

(2) the portion of all expenditures for advertising, mailing, research, consulting, surveys, expert testimony, studies, reports, analysis, compilation and dissemination of information, social media and public relations campaigns ~~related to legislative action, administrative action, or the official action of metropolitan governmental units,~~ and legal counsel used to support that type of lobbying in this state; and

(3) a reasonable good faith estimate of the portion of all salaries and

administrative overhead expenses attributable to activities of the principal ~~relating to efforts to influence legislative action, administrative action, or the official action of metropolitan governmental units~~ for that type of lobbying in this state.

Comment: it would be helpful to clarify if (c)(2) includes items such as studies, reports, surveys that were provided by trade organizations that we pay dues to. If it does, it may be challenging to determine specific amounts for the type of lobbying activity. Perhaps a good faith approach similar to (c)(3) would be applied for (c)(2).

Minnesota Campaign Finance and Public Disclosure Board

REQUEST FOR COMMENTS

Possible Adoption, Amendment, and Repeal of Rules Governing Campaign Finance Regulation and Reporting; Lobbyist Regulation and Reporting; Audits and Investigations; and Other Topics, *Minnesota Rules*, chapters 4501 through 4525; Revisor's ID Number 4809

Subject of Rules. The Minnesota Campaign Finance and Public Disclosure Board requests comments on its possible adoption of, amendment to, and repeal of rules governing campaign finance regulation and reporting, lobbyist registration and reporting, audits and investigations, and other topics including technical changes to and clarification of various rules.

The Board is considering rule adoptions, amendments, and repeals concerning campaign finance regulation and reporting that 1) establish how campaign finance filers may jointly purchase goods or services without making or receiving a donation in kind, as discussed in Advisory Opinions 452 and 436; 2) establish criteria that campaign finance filers must consider regarding the underlying sources of funding of an unregistered association that may make a contribution in determining whether the contribution may be accepted as discussed in Advisory Opinion 447; 3) clarify the circumstances under which vendors that electronically process monetary contributions to campaign finance filers are not making contributions to the recipients, and are not required to register with the Board as a political committee or fund, as discussed in Advisory Opinions 319, 369, and 434; 4) clarify whether a contributor who pays a processing fee when making a monetary contribution to a campaign finance filer has made a donation in kind to the recipient consisting of the amount of the fee as discussed in Advisory Opinion 434; 5) establish that a treasurer may group expenses together within campaign finance reports on a monthly basis if the expenses are for the same goods or services, from the same vendor, and all expenses incurred within a reporting period are disclosed through the end of that period; 6) establish criteria required in order for a candidate to be deemed not responsible for the actions of a vendor or subcontractors of a vendor hired by the candidate's committee, such as when those actions unintentionally result in coordinated expenditures; 7) amend *Minnesota Rules*, 4503.0900 to clarify the circumstances under which an equipment purchase by a principal campaign committee may not be classified as a noncampaign disbursement as discussed in Advisory Opinions 89, 127, 209, 211, and 228; 8) update rules within *Minnesota Rules*, chapter 4501 concerning electronic filing to reflect the Board's current electronic reporting systems; 9) establish a definition of the term "county office in Hennepin County" as used in *Minnesota Statutes*, section 10A.01, subdivision 10d; 10) establish a definition of the term "nomination" as used within *Minnesota Statutes*, chapter 10A; 11) delete the text "when notice required under subpart 4 is filed or" within *Minnesota Rules*, 4503.0200, subpart 5, because subpart 4 was repealed in 2005; 12) amend *Minnesota Rules*, 4503.0800, subparts 2-4, and 4503.1000 to be inclusive of a local candidate as that term is defined by *Minnesota Statutes*, section 10A.01, subdivision 10d, to match the changes made by the legislature in 2021 to the definitions of approved expenditure and contribution within *Minnesota Statutes*, section 10A.01; 13) amend *Minnesota Rules*, 4503.0900, subpart 1 to codify the noncampaign disbursement category for costs incurred by a principal campaign committee to maintain a required bank account; and 14) clarify the extent to which a disclaimer is required by *Minnesota Statutes*, section 211B.04 when campaign material is disseminated via social media.

The Board is considering rule adoptions, amendments, and repeals concerning lobbyist regulation and reporting that 1) clarify that state agencies and local government bodies are not lobbyist principals as discussed in Advisory Opinions 224, 297, and 441; 2) clarify that informational material may be provided to a public official by a lobbyist principal without violating the gift prohibition if the principal had a significant role in creating, developing, or producing the information as discussed in Advisory Opinion 445; 3) implement the changes made by the legislature in 2023 to statutes governing lobbyist regulation and reporting; 4) change the cross-reference within *Minnesota Rules*, 4511.0500, subpart 1, to refer to *Minnesota Statutes*, section 10A.04, subdivision 9, because “subpart 2” was repealed in 2017; and 5) update rules within *Minnesota Rules*, chapter 4501 concerning electronic filing to reflect the Board’s current electronic reporting systems.

The Board is considering rule adoptions, amendments, and repeals concerning audits and investigations that 1) establish a procedure for withdrawing a complaint filed with the Board; 2) establish procedures and criteria to be used when conducting audits of campaign finance filers; 3) establish procedures and criteria to be used when auditing affidavits of contributions submitted by principal campaign committees when seeking to qualify for a public subsidy payment; and 4) amend *Minnesota Rules*, 4525.0200, subpart 2, to clarify that a complaint may include an authorized representative’s address, rather than the complainant’s personal address, if the complaint is signed by an individual authorized to act on behalf of the complainant.

The Board is considering rule adoptions, amendments, and repeals concerning other topics within *Minnesota Statutes*, chapter 10A that may arise during the rulemaking process.

Persons Affected. The adoption, amendment, and repeal of rules governing campaign finance regulation and reporting would likely affect 1) candidates for state-level offices; 2) principal campaign committees; 3) political party units; 4) political committees and funds; 5) entities not registered with the Board that seek to influence state elections in Minnesota as well as certain local elections within Hennepin County; and 6) contributors. The adoption, amendment, and repeal of rules governing lobbyist regulation and reporting would likely affect 1) lobbyists; and 2) lobbyist principals. The adoption, amendment, and repeal of rules governing audits and investigations would likely affect 1) complainants; and 2) respondents, which may include actual or alleged candidates for state-level offices, principal campaign committees, political party units, political committees and funds, entities not registered with the Board that seek to influence state elections in Minnesota as well as certain local elections within Hennepin County, contributors, lobbyists, lobbyist principals, and public officials and local officials.

Statutory Authority. *Minnesota Statutes*, section 10A.02, subdivision 13 provides that *Minnesota Statutes*, chapter 14 applies to the Board and authorizes the Board to “adopt rules to carry out the purposes of” *Minnesota Statutes*, chapter 10A. *Minnesota Statutes*, section 10A.02, subdivision 12a provides that when the Board “intends to apply principles of law or policy announced in an advisory opinion issued under subdivision 12 more broadly than to the individual or association to whom the opinion was issued,” the Board “must adopt these principles or policies as rules under” *Minnesota Statutes*, chapter 14. *Minnesota Statutes*, section 10A.022, subdivision 2, paragraph (b) provides that the Board must issue rules “setting forth procedures to be followed for all audits and investigations conducted by the” Board under *Minnesota Statutes*,

chapter 10A “and other provisions under” the jurisdiction of the Board pursuant to *Minnesota Statutes*, section 10A.022, subdivision 3. *Minnesota Statutes*, section 10A.025, subdivision 1a provides that the Board must “adopt rules to regulate electronic filing and to ensure that the electronic filing process is secure.” *Minnesota Statutes*, section 10A.01, subdivision 26, paragraph (a), clause (26), provides that noncampaign disbursements include “other purchases or payments specified in” rules adopted by the Board.

Public Comment. Interested persons or groups may submit comments or information on these possible rules in writing until 4:30 p.m. on Friday, September 15, 2023. Written comments may be submitted via the Office of Administrative Hearings rulemaking eComments website at minnesotaoah.granicusideas.com. Alternatively, written comments may be submitted to the agency contact person listed below. The Board plans to appoint a subcommittee of Board members to develop the proposed rule language. The first subcommittee meeting will be held after September 15, 2023. Notice of the subcommittee meetings will be posted on the Board’s website at cfb.mn.gov/citizen-resources/the-board/statutes-and-rules/rulemaking-docket. The subcommittee meetings will be open to the public and interested parties will have the opportunity to comment on the proposed rule topics and language. The Board does not plan to appoint an advisory committee to comment on the possible rules.

Rules Drafts. The Board has not yet drafted the possible rule adoptions, amendments, and repeals, but anticipates that draft rule language will be made available to the public before publication of the proposed rules.

Agency Contact Person. Written comments not submitted via the Office of Administrative Hearings rulemaking eComments website, as well as questions, requests to receive a draft of the rules when it has been prepared, and requests for more information on these possible rules should be directed to: Andrew Olson, Campaign Finance and Public Disclosure Board, 190 Centennial Office Building, 658 Cedar Street, St. Paul, MN 55155; email: andrew.d.olson@state.mn.us; phone: (651) 539-1190; fax: (651) 539-1196 or (800) 357-4114.

Alternative Format. Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request, please contact the agency contact person listed above. TTY users may call (800) 627-3529 and ask for (651) 539-1190.

NOTE: Comments received in response to this notice will not necessarily be included in the formal rulemaking record submitted to the administrative law judge if and when a proceeding to adopt rules is started. The Board is required to submit to the administrative law judge only the written comments that are received in response to the rules after they are proposed. If you submit comments during the development of the rules and you want to ensure that the administrative law judge reviews your comments, you should resubmit the comments after the rules are formally proposed.

Dated: July __, 2023

Jeff Sigurdson, Executive Director
Campaign Finance and Public Disclosure Board



MINNESOTA CAMPAIGN FINANCE BOARD

CERTIFICATE OF THE CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD; AUTHORIZING RESOLUTION

Possible Adoption, Amendment, and Repeal of Rules Governing Campaign Finance Regulation and Reporting; Lobbyist Regulation and Reporting; Audits and Investigations; and Other Topics, *Minnesota Rules*, chapters 4501 through 4525; Revisor's ID Number 4809

I, George W. Soule, certify that I am a member and the Chair of the Campaign Finance and Public Disclosure Board, a board authorized under the laws of the State of Minnesota; that the following is a true, complete, and correct copy of a resolution that the Campaign Finance and Public Disclosure Board adopted at a properly convened meeting on July 6, 2023; that a quorum was present; and that a majority of those present voted for the resolution, which has not been rescinded or modified. The Board resolved the following:

1. The Executive Director of the Campaign Finance and Public Disclosure Board is authorized and directed to publish a request for comments regarding the possible adoption, amendment, and repeal of rules governing campaign finance regulation and reporting, lobbyist regulation and reporting, audits and investigations, and other topics, identified as *Minnesota Rules*, chapters 4501 through 4525. The Executive Director must give this notice to all persons who have registered their names with the Board for that purpose. The Executive Director must also publish the notice in the State Register. Furthermore, the Executive Director is authorized and directed to do anything else needed to complete this notice.

George W. Soule, Chair
Campaign Finance and Public Disclosure Board

Date: _____

CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD July 2023

ACTIVE FILES

Candidate/Treasurer/ Lobbyist	Committee/Agency	Report Missing/ Violation	Late Fee/ Civil Penalty	Referred to AGO	Date S&C Personally Served	Default Hearing Date	Date Judgment Entered	Case Status
Thompson, John	John Thompson for 67A	Civil Penalty and late filing fee for the committee's 2022 year-end report	\$1,000 LFF \$1,000 CP	3/10/23				
	Trace, LLC Contacts: Ashley Moore, Patrick Hynes	2021 Annual Report of Lobbyist Principal, due 3/15/22	\$1,000 LFF \$1,000 CP	12/6/22	4/21/23			

CLOSED FILES

Candidate/Treasurer/ Lobbyist	Committee/Agency	Report Missing/ Violation	Late Fee/ Civil Penalty	Referred to AGO	Date S&C Served by Mail	Default Hearing Date	Date Judgment Entered	Case Status