

Minnesota

# *Campaign Finance and Public Disclosure Board Meeting*

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**June 14, 2011**

*Room 5, State Office Building  
100 Rev. Martin Luther King, Jr. Blvd  
St. Paul, MN 55155*

## **REGULAR SESSION**

**9:30 A.M.**

## **AGENDA**

### **Consideration of the revocation of Advisory Opinion 257**

Although advisory opinions are not legal authority in matters involving anyone other than the original requester, the Board may, nevertheless, revoke an advisory opinion that does not accurately reflect the Board's interpretation of a particular statute.

Minnesota Statutes Section 10A.12, subd. 5, and 10A.27, subd. 13, require associations that are not registered with the Board to provide disclosure of their sources of money when they make contributions or transfers above specified thresholds to registered political committees or funds. In advisory opinion 257, the Board concluded that these disclosure requirements do not apply to corporations making contributions or transfers to ballot question political committees or funds.

While the advisory opinion concluded that the underlying source disclosure requirements did not apply to corporations, it also concluded that the requirements did apply if the unregistered association donor had a legal structure other than the corporate form.

The question being considered by the Board is whether Advisory Opinion 257 is supported by the law in its conclusion that corporations are exempt from the disclosure requirements of Sections 10A.12, subd. 5, and 10A.27, subd. 13. If Advisory Opinion 257 reached an incorrect legal conclusion, the Board could revoke it and re-examine the application of Chapter 10A to ballot question funding. If Advisory Opinion 257 is revoked, other advisory opinions relying on its reasoning would also be revoked or amended.

**Public testimony**

The Board will allow a limited time for public testimony. The testimony should be restricted to the question of whether the Chapter 10A disclosure provisions are applicable to corporations that transfer funds or contribute to ballot question political committees or funds. Testimony will also be considered regarding the scope of disclosure that should be required of corporations and other unregistered associations donating to ballot question political committees or funds and regarding the impact of the revocation of Advisory Opinion 257 on corporations that may be affected.

**To be included on the list of testifiers**

Members of the public will be permitted to testify, time permitting, without advance notice. However due to the limited time for testimony, preference will be given to those persons who provide advance notice of their intent to testify. Interested persons may give notice to the Executive Director, Gary Goldsmith, by email to [gary.goldsmith@state.mn.us](mailto:gary.goldsmith@state.mn.us), or by telephone to (651) 296-1721.

**Other topics**

The Board may also consider and take action on the following topics:

1. The scope and application of Minnesota Statutes Section 10A.12, subd. 5, and 10A.27, subd. 13, to corporate ballot question activities if Advisory Opinion 257 is revoked;
2. The scope and application of Section 10A.20, subd. 8, which provides for exemptions from disclosure in certain cases;
3. The scope of disclosure under Chapter 10A that would be required from an association that uses only business income for contributions or transfers to ballot question political committees or funds;
4. The development of a Statement of Guidance providing safe harbor provisions for unregistered associations making expenditures to promote or defeat a ballot question.

**Attachments:**

**Memorandum** (to be released the week of June 6)

**Advisory Opinion 257**

**Relevant Statutes**

## Statutory Citations

### 10A.12 POLITICAL FUNDS.

Subdivision 1. **When required.** An association other than a political committee or party unit may not contribute more than \$100 in aggregate in any one year to candidates, political committees, or party units or make any approved or independent expenditure or expenditure to promote or defeat a ballot question unless the contribution or expenditure is made from a political fund.

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Subd. 5. **Dues or membership fees.** An association may, if not prohibited by other law, deposit in its political fund money derived from dues or membership fees. Under section 10A.20, the treasurer of the fund must disclose the name of any member whose dues, membership fees, and contributions deposited in the political fund together exceed \$100 in a year.

### 10A.20 CAMPAIGN REPORTS.

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Subd. 3. **Contents of report.** (a) The report must disclose the amount of liquid assets on hand at the beginning of the reporting period.

(b) The report must disclose the name, address, and employer, or occupation if self-employed, of each individual or association that has made one or more contributions to the reporting entity, including the purchase of tickets for a fund-raising effort, that in aggregate within the year exceed \$100 for legislative or statewide candidates or ballot questions, together with the amount and date of each contribution, and the aggregate amount of contributions within the year from each source so disclosed. A donation in-kind must be disclosed at its fair market value. An approved expenditure must be listed as a donation in-kind. A donation in-kind is considered consumed in the reporting period in which it is received. The names of contributors must be listed in alphabetical order. Contributions from the same contributor must be listed under the same name. When a contribution received from a contributor in a reporting period is added to previously reported unitemized contributions from the same contributor and the aggregate exceeds the disclosure threshold of this paragraph, the name, address, and employer, or occupation if self-employed, of the contributor must then be listed on the report.

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

(d) The report must disclose each loan made or received by the reporting entity within the year in aggregate in excess of \$100, continuously reported until repaid or forgiven, together with the name, address, occupation, and principal place of business, if any, of the lender and any endorser and the date and amount of the loan. If a loan made to the principal campaign committee of a candidate is forgiven or is repaid by an entity other than that principal campaign committee, it must be reported as a contribution for the year in which the loan was made.

(e) The report must disclose each receipt over \$100 during the reporting period not otherwise listed under paragraphs (b) to (d).

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

(g) The report must disclose the name and address of each individual or association to whom aggregate expenditures, including approved expenditures, have been made by or on behalf of the reporting entity within the year in excess of \$100, together with the amount, date, and purpose of each expenditure and the name and address of, and office sought by, each candidate on whose behalf the expenditure was made, identification of the ballot question that the expenditure was intended to promote or defeat, and in the case of independent expenditures made in opposition to a candidate, the candidate's name, address, and office sought. A reporting entity making an expenditure on behalf of more than one candidate for state or legislative office must allocate the expenditure among the candidates on a reasonable cost basis and report the allocation for each candidate.

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

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

(j) The report must disclose the name and address of each political committee, political fund, principal campaign committee, or party unit to which contributions have been made that aggregate in excess of \$100 within the year and the amount and date of each contribution.

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

(l) The report must disclose the name and address of each individual or association to whom noncampaign disbursements have been made that aggregate in excess of \$100 within the year by or on behalf of the reporting entity and the amount, date, and purpose of each noncampaign disbursement.

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

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

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**Subd. 8. Exemption from disclosure.** The board must exempt a member or contributor to an association or any other individual, from the requirements of this section if the member,

contributor, or other individual demonstrates by clear and convincing evidence that disclosure would expose the member or contributor to economic reprisals, loss of employment, or threat of physical coercion. An association may seek an exemption for all of its members or contributors if it demonstrates by clear and convincing evidence that a substantial number of its members or contributors would suffer a restrictive effect on their freedom of association if members were required to seek exemptions individually.

## **10A.27 CONTRIBUTION LIMITS.**

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Subd. 13. **Unregistered association limit; statement; penalty.** (a) The treasurer of a political committee, political fund, principal campaign committee, or party unit must not accept a contribution of more than \$100 from an association not registered under this chapter unless the contribution is accompanied by a written statement that meets the disclosure and reporting period requirements imposed by section 10A.20. This statement must be certified as true and correct by an officer of the contributing association. The committee, fund, or party unit that accepts the contribution must include a copy of the statement with the report that discloses the contribution to the board. This subdivision does not apply when a national political party contributes money to its affiliate in this state.

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## **10A.121 INDEPENDENT EXPENDITURE POLITICAL COMMITTEES AND INDEPENDENT EXPENDITURE POLITICAL FUNDS**

Subdivision 1. **Permitted disbursement.** An independent expenditure political committee or an independent expenditure political fund, in addition to making independent expenditures, may:

- (1) pay costs associated with its fund-raising and general operations;
- (2) pay for communications that do not constitute contributions or approved expenditures; and
- (3) make contributions to other independent expenditure political committees or independent expenditure political funds.

Subd. 2. **Penalty.** (a) An independent expenditure political committee or independent expenditure political fund is subject to a civil penalty of up to four times the amount of the contribution or approved expenditure if it does the following:

- (1) makes a contribution to a candidate, party unit, political committee, or political fund other than an independent expenditure political committee or an independent expenditure political fund; or
- (2) makes an approved expenditure

(b) No other penalty provided in law may be imposed for conduct that is subject to a civil penalty under this section.

