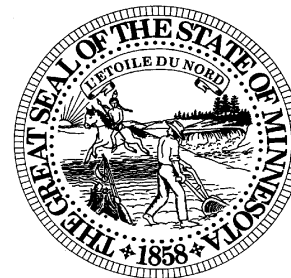


Minnesota

*Campaign Finance and
Public Disclosure Board*



THIS ADVISORY OPINION IS PUBLIC DATA
pursuant to a consent for release of information signed by the requestor

Advisory Opinion 415

Issued to:

Sarah Duniway
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SUMMARY

A contribution to a fund established to support a candidate's participation in a recount of ballots affecting that candidate's election is a noncampaign disbursement under Minnesota Statutes Section 10A.01, subd. 26(22).

FACTS

As the representative of the Dayton Transition fund, d/b/a/ the Dayton Recount Fund, you ask the Campaign Finance and Public Disclosure Board ("Board") for an advisory opinion based on the following facts, which you have provided.

1. The Dayton Transition Fund ("the Corporation") is a Minnesota nonprofit corporation registered with the Internal Revenue Service as a "political organization" under Section 527 or the Internal Revenue Code. The Transition Fund is not registered with the Board as a political committee.
2. The Corporation does business as the Dayton Recount Fund ("the Recount Fund" for the purposes of monitoring the recount of ballots for the Minnesota 2010 gubernatorial election and representing the interests of voters who cast their ballots for Mark Dayton.
3. The Recount Fund wishes to raise money for its efforts by soliciting and accepting contributions from political committees and from those associations who spend through political funds that are registered with the Board.
4. The Recount Fund seeks Board advice to guide its conduct since it would not wish to solicit or accept contributions from the subject donors if those donations are prohibited.

QUESTION

May a political committee or an association spending its money through a political fund donate money to the Recount Fund?

OPINION

Statutory Analysis

This advisory opinion request involves questions governed by both Chapter 10A, which is administered by the Board and Chapter 211B, which is not administered by any agency, but is enforced by the Office of Administrative Hearings through a statutory complaint process.

The Board has noted on many occasions that Minnesota Statutes Section 211B.12 is the primary source for determining the legal uses of money collected for “political purposes”. “Political purposes” is defined in §211B.01, subd. 6, as “intended or done to influence, directly or indirectly, voting at a primary or general election”.

Section 211B.12 prohibits the use of money collected for political purposes unless one of two conditions are met. The statute says:

“Use of money collected for political purposes is prohibited unless the use [1] is reasonably related to the conduct of election campaigns, or [2] is a noncampaign disbursement as defined in Section 10A.01, subdivision 26.”

Minnesota Statutes Section 10A.01, subd. 26, lists specified noncampaign disbursements and includes “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”.

Section 211B.12 does not restrict its application to only certain types of entities. Rather, it applies to all money raised for political purposes without regard to the type of entity raising or spending the money.

Under the statutory language, the Board’s role is to provide the flexibility of recognizing noncampaign disbursements not specifically listed in the statute through the issuance of advisory opinions. Once recognized by the Board, these noncampaign disbursements become legal expenditures under §211B.12.

Conclusion

Minnesota Statutes Section 211B.12 provides that money collected for political purposes may be used for expenses related to “the conduct of election campaigns” or for noncampaign disbursements.

While a recount procedure itself may not be a part of the “election campaign”, it is a part of the election process. When a recount is mandated by statute, as in the present case, the recount may be closely tied to the ultimate success or failure of an election campaign.

Minnesota Statutes Section 10A.01, subd. 26(22) provides that noncampaign disbursements include payments for items not specified in the statute but which the Board concludes are for any purpose other than to influence the nomination or election of a candidate or to promote or defeat a ballot question.

The Board recognizes that while important to an election, a recount effort happens after voting in the election has concluded. A recount of ballots will ascertain the result of the election, but it will not influence that election.

The Board concludes that a contribution to a fund established to support a candidate's participation in a recount of ballots affecting that candidate's election should be, and hereby is, recognized as a noncampaign disbursement.

Board Note on Reporting

Contributions by a principal campaign committee to a fund paying for the costs incurred during a recount of ballots are reported on the schedule of noncampaign disbursements. Contributions by a political committee, an association using a political fund, or political party to a fund paying for the costs incurred during a recount of ballots are reported on the schedule of expenditures. In either case, the contribution is a transaction that must be disclosed to the Board on the Report of Receipts and Expenditures.

Issued November 24, 2010

John Scanlon, Vice Chair
Campaign Finance and Public Disclosure Board

RELEVANT STATUTES AND RULES

MINNESOTA 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:

. . .

(22) 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; and

211B.12 LEGAL EXPENDITURES

Use of money collected for political purposes is prohibited unless the use is reasonably related to the conduct of election campaigns, or is a noncampaign disbursement as defined in section 10A.01, subdivision 26. . . .