

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

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

RE: Providing on-line contribution service

ADVISORY OPINION 319

SUMMARY

A company may, consistent with Minnesota Statutes Chapter 10A, provide internet-based credit card contribution services which include credit card processing and accumulation of funds into a company account for forwarding to the beneficiary principal campaign committees. Certain recordkeeping and reporting issues arise, about which principal campaign committees should be notified. Issuance of this opinion does not constitute endorsement of the requester or of its plan.

FACTS

As the representative of a corporation, you ask the Campaign Finance & Public Disclosure Board (the Board) for an advisory opinion based on the following facts contained in your request letter or conveyed verbally to Board staff:

1. The corporation you represent (hereinafter referred to as "the Company") wants to offer fundraising services to candidates' campaign committees in Minnesota, some of which may be registered with the Board. The Company's services will include an internet-based contribution system and credit card processing. The services will be available to any committee that wants to use them.
2. The Company will create and maintain a web site which will host customized donation forms for each of its clients. Each client committee may include a link on its own web site that will move the user to the Company's contribution page for that committee. The donor can then enter information to make a contribution.
3. If the client committee does not have its own web site, it can notify potential donors of the on-line contribution page by giving out the direct link to the page. The

Company's host site will also provide an index of all participating committees from which donors may access the donation page for the committee of their choice. The customized donation forms may also include a link back to the web site of the participating committee.

4. The Company will not promote the donation page of any particular candidate or candidates. If the Company does any promotion it will be generic to the concept, inviting individuals to visit the Company's site to donate to the candidate of their choice.
5. The Company will accept contributions on behalf of the participating committees. Only credit card donations will be accepted. In order to make an on-line contribution, the donor will be required to provide his or her name, address, employer, occupation, donation information, and credit card information.
6. The donation form will be programmed not to accept more than the statutory limit that the participating committee may accept from the donor. Donors will be required to check boxes which state that the donor attests that the contribution is made from the donor's own funds and that the donor is personally liable for debt on the credit card used.
7. When the donor submits the contribution, and all required information has been provided, the transaction will be transferred to an on-line credit card processing service for verification and funds transfer. The funds will be transferred to the Company's bank account.
8. The company will periodically tender to each participating committee a check for its contributions. The Company will charge a fee of 10% of all funds raised, which will be deducted from the monthly checks to participating committees. The company will also provide to the participating committees a monthly informational statement including dates and amounts of contributions and such other information as required by the Board.

The Company asks whether its plan, if implemented, would result in any violations of Minnesota Statutes Chapter 10A.

ISSUE

Does Minnesota Statutes Chapter 10A prohibit a for-profit corporation from providing an internet-based service where donors may make contributions to principal campaign committees registered with the Board, assuming that the corporation initially processes the contributions, receives the funds, and forwards the net proceeds to the committees on a monthly basis?

OPINION

The business plan developed by the requester and presented in the fact statement of this opinion does not give rise to any violations of Minnesota Statutes Chapter 10A. However, to enable recipient committees to comply with Chapter 10A, the Board suggests that the Company also follow the recommendations included herein.

This request presents the question of whether the Company's plan would result in prohibited contributions from the Company or in "bundling" under Minn. Stat. § 10A.27, which prohibits a candidate from accepting contributions "made or delivered" in excess of the amount the contribution limits set forth in the statute.

Subdivision 13 of Minn. Stat. § 10A.27 prohibits the acceptance of contributions in excess of \$100 from unregistered entities and Minn. Stat. § 211B.15 prohibits corporate contributions. However transfers from the Company to its client committees are not contributions from the Company to the committees. Thus, the statutory provisions cited above are not applicable to these transfers.

It is the Board's opinion that the service of accumulating, processing, and transferring contributions from individuals to principal campaign committees is not bundling under the plan described. In reaching this conclusion, the Board recognizes the following characteristics of the plan:

1. The Company is providing services for a fee.
2. The services are available to any campaign committee that wishes to purchase them.
3. The Company is not itself engaged in solicitation of contributions. It will be up to the client committees to inform potential donors of the internet donation form and urge them to contribute.
4. If the Company provides any publicity, it will be generic in form; letting people know that they can go to the Company's site to contribute to the candidate of their choice.

The Company is providing the electronic equivalent of a mailbox into which donors may deposit contributions for forwarding to the client committees. To enable committees to accept credit card transactions without having their own credit card account, the Company processes the information and deducts its fees before forwarding the proceeds to the client committees.

All of the steps in the Company's process are currently accommodated by campaign finance law without consideration of bundling or corporate contribution issues. The postal service accepts payments or credit card information, accumulates it, and forwards it to the addressee committees. Credit card processing companies convert credit card authorizations to money, deduct fees, and forward the net to the committee, usually by direct deposit. The Board sees no difference between the Company's plan and current practice that would render the Company's plan illegal.

The Board does note that the company intends to collect certain data and enforce certain limits that are ultimately the committee treasurer's responsibility. It must be emphasized that the Company's efforts may assist the treasurer in meeting the requirements of Chapter 10A, but they do not relieve the treasurer from ensuring compliance with the statutes. In order for the Company to facilitate compliance by participating campaign committees, the Board recommends that it change its planned web implementation and reports to committees in certain ways.

The Company intends to obtain the donor's employer and occupation. This may not be sufficient for committees reporting to the Board. Board reports require two components to employment information. First, the donor must indicate whether he or she has an employer. If the donor has an employer, the name of the employer must be obtained. If the donor does not have an employer, the person is considered self-employed and must provide his or her occupation. The occupation may include commonly recognized occupations, or a statement of the person's work-related activities, such as "retired" or "unemployed".

The reports the Company provides to client committees should include the name and complete address of each donor, including street address, city, state, and zip code. They should also include the donation date and amount, before any fees are deducted, and the employment information described above.

The Company states that it will retain these records for 3 years. Committees are required to obtain and keep this information for 4 years. The Board recommends that the Company do so as well.

The unique combination of services proposed by the Company gives rise to the question of when the participating committee "receives" the contribution for the purposes of Chapter 10A. This is significant because the date the contribution is received controls the time period in which the treasurer must deposit the contribution and, indirectly, the time in which the contribution may be returned to the contributor. It is the Board's opinion that contributions are received for reporting purposes when the committee receives the net proceeds in the mail from the Company.

It is also important that campaign committees be advised that they cannot issue a political contribution refund receipt for a contribution until it is received. Thus receipts may be issued only after the committee receives the proceeds from the Company.

The amount of each contribution for reporting purposes and for the issuance of political contribution refund receipts is the full amount contributed by the donor, before any deductions. The recipient committee would record the full amount of the contributions and at the same time record a campaign expenditure for the Company's fee. If a contribution is to be returned, the full amount, before reduction for processing fees must be returned.

CAVEAT FOR PRINCIPAL CAMPAIGN COMMITTEES

The fact that the Board finds the Company's planned services to be within the bounds of Minnesota Statutes Chapter 10A should not be construed to be an endorsement of any company intending to provide such services.


The Board has concerns about the fact that the plan results in the Company holding in its own bank account funds which are intended to be contributions to its client committees. The Board recognizes that this is necessary in order for the Company to maintain a single credit card processing account that serves multiple candidates. However, principal campaign committees are advised to assure themselves as to the security of contributions intended for the committee but maintained in the Company's account until disbursement.

Principal campaign committees are also advised thoroughly to understand and reach agreement with the Company concerning the Company's right to use or sell data gathered about the committee's donors.

This statement is not intended to be a reflection on the Company requesting this opinion. The Board has no information regarding this particular company. Rather, this statement is intended to be one of general application that should be considered by any principal campaign committee in a situation where money intended for the committee is in the possession of another entity.

The Board recommends and requests that the Company give a copy of this opinion to each committee which is considering implementing the services described herein.

Issued: 12/14/99



Sidney Pauly, Chair

Campaign Finance and Public Disclosure Board