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January 21, 1994

Mr. N. Bradley Litchfield
Office of General Counsel
Federal Elections Commission
999 E. Street N.W.
Washington, D.C. 20463

AOR 1994-02

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FEDERAL ELECTIONS
COMMISSION
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Dear Mr. Litchfield,

I am writing on behalf of Linda Berglin for United States Senate Volunteer Committee, which is dully registered with the Federal Elections Commission, (FEC). I am seeking an advisory opinion from the FEC, concerning the application of federal election law which appears to be contrary to provisions in Minnesota Election Law as applied to the fundraising activities of federal candidate.

Minnesota Statutes 10A.065 (a copy which is attached) states in part "A candidate for the Legislature or for constitutional office, a candidate's principal campaign committee, any other political committee with the candidate's name or title, or any committee authorized by the candidate. shall not solicit or accept a contribution on behalf of the candidate's principal campaign committee, and any committee authorized by the candidate, from a registered lobbyist, political committee or political fund during the regular session of the Legislature".

Minnesota Statutes 10A.01, Subdivision 5, (a copy of which is attached) defines a "candidate" in Minnesota and states in part, "Candidate means an individual who seeks nomination or election to any statewide or legislative office for which reporting is not required under federal laws." This subdivision further defines a candidate as "A candidate remains a candidate until the candidate's principal campaign committee is dissolved as provided in section 10A.24".

My question centers on whether the State of Minnesota can require a candidate for federal office to abide by restrictions imposed under state law governing when and who a candidate for federal office can solicit for campaign contributions to the federal office that individual seeks?

In addition, can the State of Minnesota require a state office holder who is seeking election to the United States Congress to dissolve their principal campaign committee at the state level as a prerequisite to seeking contributions to federal office?

Since the Minnesota Legislature will convene on February 22, 1994, I would appreciate your written opinion on this matter as soon as possible.

Sincerely,


Kim Isenberg
Campaign Manager
Berglin for United States Senate Volunteer Committee

Ethics, Fund Investments, Emergency Management

CHAPTER 10A

ETHICS IN GOVERNMENT

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10A.01 DEFINITIONS.

Subdivision 1. For the purposes of sections 10A.01 to 10A.34, the terms defined in this section have the meanings given them unless the context clearly indicates otherwise.

Subd. 2. "Administrative action" means an action by any official, board, commission or agency of the executive branch to adopt, amend, or repeal a rule pursuant to chapter 14. "Administrative action" does not include the application or administration of an adopted rule, except in cases of rate setting, power plant and powerline siting and granting of certificates of need under chapter 116J.

Subd. 3. "Association" means business, corporation, firm, partnership, committee, labor organization, club, or any other group of two or more persons, which includes more than an immediate family, acting in concert.

Subd. 4. "Associated business" means any association in connection with which the individual is compensated in excess of \$50 except for actual and reasonable expenses in any month as a director, officer, owner, member, partner, employer or employee, or is a holder of securities worth \$2,500 or more at fair market value.

Subd. 5. Candidate. "Candidate" means an individual who seeks nomination or election to any statewide or legislative office for which reporting is not required under federal laws. The term candidate shall also include an individual who seeks nomination or election to supreme court, court of appeals, or district court judgeships of the state.

An individual shall be deemed to seek nomination or election if the individual has taken the action necessary under the law of the state of Minnesota to qualify for nomination or election, has received contributions or made expenditures in excess of \$100, or has given implicit or explicit consent for any other person to receive contributions or make expenditures in excess of \$100, for the purpose of bringing about the individual's nomination or election. A candidate remains a candidate until the candidate's principal campaign committee is dissolved as provided in section 10A.24.

Subd. 6. "Board" means the state ethical practices board.

Subd. 7. "Contribution" means a transfer of funds or a donation in kind.

Contribution includes any loan or advance of credit to a political committee, political fund, or principal campaign committee, which loan or advance of credit is (a) forgiven, or (b) paid by an individual or an association other than the political committee, political fund, or principal campaign committee to which the loan or advance of credit is made. If an advance of credit or a loan is forgiven or paid as provided in this subdivision, it is a contribution in the year in which the loan or advance of credit is made.

A contribution made for the purpose of defeating a candidate is considered made for the purpose of influencing the nomination or election of that candidate or any opponent of that candidate.

Contribution does not include services provided without compensation by an individual volunteering personal time on behalf of a candidate, ballot question, political committee or political fund, or the publishing or broadcasting of news items or editorial comments by the news media.

Subd. 7a. "Transfer of funds" or "transfer" means money or negotiable instruments given by an individual or association to a political committee, political fund, or principal campaign committee for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or defeating a ballot question.

Subd. 7b. "Donation in kind" means anything of value other than money or negotiable instruments given by an individual or association to a political committee, political fund, or principal campaign committee for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or defeating a ballot question. Donation in kind includes an approved expenditure.

Subd. 8. "Depository" means any bank, savings and loan association or credit union, organized under federal or state law and transacting business within Minnesota.

Subd. 9. "Election" means a primary, special primary, general or special election.

Subd. 10. Campaign expenditure. "Campaign expenditure" or "expenditure" means a purchase or payment of money or anything of value, or an advance of credit, made or incurred for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or defeating a ballot question.

An expenditure is considered to be 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.

An expenditure made for the purpose of defeating a candidate is considered made for the purpose of influencing the nomination or election of that candidate or any opponent of that candidate.

Except as provided in clause (a), expenditure includes the dollar value of a donation in kind.

Expenditure does not include:

- (a) Noncampaign disbursements as defined in subdivision 10c;
- (b) Transfers as defined in subdivision 7a;
- (c) Services provided without compensation by an individual volunteering personal time on behalf of a candidate, ballot question, political committee, or political fund; or
- (d) The publishing or broadcasting of news items or editorial comments by the news media.

10A.05 LOBBYIST REPORT.

Within 30 days after each lobbyist filing date set by section 10A.04, the executive director of the board shall report to the governor, and the presiding officer of each house of the legislature, the names of the lobbyists registered who were not previously reported, the names of the persons or associations whom they represent as lobbyists, the subject or subjects on which they are lobbying, and whether in each case they lobby to influence legislative or administrative action or both. At the same times, the executive director of the board shall report to the governing body of each metropolitan governmental unit, the names of the registered lobbyists who attempt to influence the official action of metropolitan governmental units, the names of the persons or associations whom they represent as lobbyists, and the subject or subjects on which they are lobbying.

History: 1974 c 470 s 5; 1975 c 271 s 6; 1990 c 608 art 1 s 12

10A.06 CONTINGENT FEES PROHIBITED.

No person may act as or employ a lobbyist for compensation that is dependent upon the result or outcome of any legislative or administrative action, or of the official action of a metropolitan governmental unit. A person who violates the provisions of this section is guilty of a gross misdemeanor.

History: 1974 c 470 s 6; 1990 c 608 art 1 s 13

10A.065 CONTRIBUTIONS AND SOLICITATIONS DURING LEGISLATIVE SESSION.

Subdivision 1. Registered lobbyist contributions; legislative session. A candidate for the legislature or for constitutional office, a candidate's principal campaign committee, any other political committee with the candidate's name or title, or any committee authorized by the candidate, shall not solicit or accept a contribution on behalf of the candidate's principal campaign committee, any other political committee with the candidate's name or title, or any committee authorized by the candidate, from a registered lobbyist, political committee, or political fund during a regular session of the legislature.

Subd. 2. Definition. For purposes of this section, "regular session" does not include a special session or the interim between the two annual sessions of a biennium.

Subd. 3. Civil penalty. A candidate or political committee that violates this section is subject to a civil fine of up to \$500. If the board makes a public finding that there is probable cause to believe a violation of this section has occurred, the board shall bring an action, or transmit the finding to a county attorney who shall bring an action, in the district court of Ramsey county, to impose a civil fine as prescribed by the board. Fines paid under this section must be deposited in the general fund in the state treasury.

Subd. 4. Special election. This section does not apply to a candidate or a candidate's principal campaign committee in a legislative special election during the period beginning when the person becomes a candidate in the special election and ending on the day of the special election.

Subd. 5. Political committee. This section does not apply to a political committee established by a state political party; by the party organization within a congressional district, county, legislative district, municipality, or precinct; by all or part of the party organization within each house of the legislature, except for individual members; by a candidate for a judicial office; or to a member of such a political committee acting solely on behalf of the committee.

History: 1990 c 608 art 3 s 4; 1991 c 349 s 9,10

10A.07 CONFLICTS OF INTEREST.

Subdivision 1. Disclosure of potential conflicts. A public official or a local official elected to or appointed by a metropolitan governmental unit who in the discharge of official duties would be required to take an action or make a decision that would sub-

Subd. 8. [Repealed, 1976 c 307 s 35]

History: 1974 c 470 s 22; 1975 c 271 s 6; 1978 c 463 s 62-65; 1986 c 444; 1990 c 608 art 3 s 8

10A.23 CHANGES AND CORRECTIONS.

Any material changes in information previously submitted and any corrections to a report or statement shall be reported in writing to the board within ten days following the date of the event prompting the change or the date upon which the person filing became aware of the inaccuracy. The change or correction shall identify the form and the paragraph containing the information to be changed or corrected. Any person who willfully fails to report a material change or correction is guilty of a gross misdemeanor.

History: 1974 c 470 s 23; 1975 c 271 s 6; 1976 c 307 s 20

10A.24 DISSOLUTION OR TERMINATION.

Subdivision 1. Termination report. No political committee or political fund shall dissolve until it has settled all of its debts and disposed of all its assets in excess of \$100 and filed a termination report. The termination report may be made at any time and shall include all information required in periodic reports.

Subd. 2. Termination allowed. Notwithstanding subdivision 1, after mailing notice to any remaining creditors by certified mail, a political committee or political fund that has debts incurred more than six years previously, has disposed of all its assets, and has met the requirements of section 10A.20, subdivision 7, may file a termination report.

History: 1974 c 470 s 24; 1978 c 463 s 66; 1990 c 608 art 3 s 9

10A.241 TRANSFER OF DEBTS.

Notwithstanding any provisions of this chapter to the contrary except as provided in this section, a candidate may terminate the candidate's principal campaign committee for one state office by transferring any debts of that committee to the candidate's principal campaign committee for another state office, provided that any outstanding unpaid bills or loans from the committee being terminated are assumed and continuously reported by the committee to which the transfer is being made until paid or forgiven. A loan that is forgiven is covered by section 10A.20 and, for purposes of section 10A.324, is a contribution to the principal campaign committee from which the debt was transferred under this section.

History: 1986 c 475 s 1; 1991 c 199 art 2 s 1

10A.242 DISSOLUTION OF INACTIVE COMMITTEES AND FUNDS.

Subdivision 1. Dissolution required. A political committee or political fund must be dissolved within 60 days after receiving notice from the board that the committee has become inactive. The assets of the committee or fund must be spent for the purposes authorized by section 211B.12 and other applicable law or liquidated and deposited in the general account of the state elections campaign fund within 60 days after the board notifies the committee or fund that it has become inactive.

Subd. 2. Inactivity defined. (a) A principal campaign committee becomes inactive on the later of the following dates:

(1) when six years have elapsed since the last election in which the person was a candidate for the office sought or held at the time the principal campaign committee registered with the board; or

(2) when six years have elapsed since the last day on which the individual for whom it exists served in an elective office subject to this chapter.

(b) A committee or fund other than a principal campaign committee becomes inactive when two years have elapsed since the end of a reporting period during which the committee or fund made an expenditure or disbursement requiring disclosure under this chapter.

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February 17, 1994

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Jonathon Levin
Federal Elections Commission
999 E. Street NW
Washington, D.C. 20463

AOR 1994-2
Revised

Dear Mr. Levin:

I am writing to as per our telephone conversations of February 15 and 16. I am asking the FEC to disregard the second to the last paragraph of our January 20, 1994 letter concerning: the state of Minnesota requiring a state office holder who is seeking election to the United States Congress to dissolve their principal campaign committee at the state level as a prerequisite to seeking contributions to federal office? After further follow-up by our campaign, we found there is no requirement in Minnesota statutes concerning this issue. Therefore no need for an advisory on this point.

Please contact me with any other questions.

Sincerely,

Kim Isenberg
Campaign Manager