

07/13/2017

**Draft disclaimer and other non-expenditure provisions
Provisions modified since June meeting marked by yellow highlighting**

4501.0100 DEFINITIONS

[For text of subparts 1 – 3, see M.R.]

Subp. 3a. **Campaign material.** "Campaign material" has the meaning given this term in Minnesota Statutes section 211B.01, subdivision 2.

[For text of subparts 4-9, see M.R.]

4501.0200 SECURITIES

Subpart 1. **Items which are securities.** For purposes of Minnesota Statutes chapter 10A and Minnesota Rules chapters 4501 through 4525, securities include any stock, share, bond, warrant, option, pledge, note, mortgage, debenture, lease, or commercial paper, in any corporation, partnership, mutual fund, trust, or other association.

Subp. 2. **Items which are not securities.** For purposes of Minnesota Statutes chapter 10A and Minnesota Rules chapters 4501 through 4525, securities do not include deposits in a savings account, certificates of deposit, money market certificates, treasury bills, bonds or notes, dividends from securities, shares in a mutual fund or exchange traded fund, or holdings in a defined benefit pension or retirement plan.

Subp. 3. **Holder of securities.** A "holder of securities" is an individual having an ownership interest in a security, or who is the trustee or beneficiary of a trust having an ownership in a security. An individual owning shares in a mutual fund does not have an ownership interest in underlying securities owned by the fund.

Subp. 4. **Valuation of securities.** The value of a security is its fair market value. For securities traded on national exchanges, the fair market value is the closing bid price for the security on a given date. The value of a partial interest in a security is the value of the holder's proportionate share.

Subp. 5. **Exception for charitable trusts.** Trustees of associations organized for charitable, philanthropic, religious, social service, educational, or other public use or purpose are not holders of securities owned by the associations.

4503.0500 CONTRIBUTIONS

[For text of subpart 1, see M.R.]

Subp. 2. **Time of receipt of contributions.**

A. A monetary contribution not made through electronic means is received by a political committee or political fund, for reporting and contribution limit purposes, when the instrument conveying the contribution, such as cash, check, or money order, is physically received by the treasurer, the candidate, or a committee or fund worker.

Commented [PJ(1)]: This definition is needed for the disclaimer section below.

Commented [PJ(2)]: This amendment is intended to remove mutual and exchange traded funds from the list of securities that must be disclosed on a statement of economic interest. It also is intended to clarify that interests in defined benefit pension plans do not need to be disclosed. This amendment was in the potential technical changes.

Commented [PJ(3)]: There will be discussion at the July meeting regarding whether to clarify that interests in both a trust and in the underlying securities owned by the trust must be disclosed and whether beneficiaries of blind trusts should be exempted from having to disclose the underlying securities owned by the blind trust.

Commented [PJ(4)]: These amendments are intended to clarify when contributions made through electronic means are received. They were in the potential technical package.

07/13/2017

B. A contribution delivered through the United States mail is received on the date the mail is gathered from the delivery point by the treasurer, the candidate, or a committee or fund worker.

C. A monetary contribution made through electronic means is received for purposes of the registration requirements in section 10A.14; the reporting requirements in section 10A.20; the sessional contribution prohibition in section 10A.273; and the affidavit of contributions requirement in section 10A.323, on the date that the contributor makes the contribution to the contribution processor.

Commented [SJ(5)]: This section provides that for the various reporting deadlines and cutoff requirements of 10A the date the electronic contribution is made is used.

D. A monetary contribution made through electronic means is received for purposes of the deposit requirements in section 10A.15, subdivision 3, on the date that the treasurer, the candidate, or a committee or fund worker has access to the funds under the terms of the agreement with the contribution processor.

Commented [SJ(6)]: This section provides that the deposit deadline is set when the electronic contribution may be downloaded to the committee account.

[For text of subparts 3 – 9, see M.R.]

Subp. 10. Electronic contribution processors. An organization that provides contribution processing and delivery services, when acting in the ordinary course of business by collecting and disbursing contributions to a committee or fund that was designated by the contributor, is not required to register under Minnesota Statutes section 10A.14 or report under Minnesota Statutes section 10A.20.

Commented [PJ(7)]: This amendment is to clarify that contribution processors do not need to register or report under Chapter 10A.

4503.1400 PUBLIC SUBSIDY AGREEMENTS.

[For text of subparts 1-3, see M.R.]

Subp. 3a. Effect on contributions to independent expenditure committees and funds. By signing a public subsidy agreement, a candidate agrees that the provision in Minnesota Statutes section 10A.25, subdivision 3a, prohibiting a candidate's principal campaign committee from making independent expenditures also prohibits a candidate's principal campaign committee from making contributions to independent expenditure political committees or funds.

Commented [PJ(8)]: This provision enacts Advisory Opinion 412 into rule.

Subp. 10. Special elections held under Minnesota Statutes section 204B.13, subdivision 2, paragraph (c). The filing deadlines below apply to a special election held under Minnesota Statutes section 204B.13, subdivision 2, paragraph (c), for which there is no filing period:

Commented [PJ(9)]: This provision specifies how to administer the deadlines for the public subsidy program when a special election is called to fill a vacancy in nomination under section 204B.13, subdivision 1, paragraph (c). These special elections do not have filing periods like a typical special election.

- A. The candidate must sign and submit the public subsidy agreement to the board not later than eight days after the general election.
- B. The candidate must submit the affidavit of contributions not later than 12 days after the general election.

4503.XXXX DISCLAIMERS

Subpart 1. Independent expenditures in opposition to candidate. An independent expenditure in opposition to a candidate that uses the language below in the communication satisfies the disclaimer requirements in Minnesota Statutes section 10A.17, subdivision 4, and Minnesota Statutes section 211B.04:

Commented [PJ(10)]: This section specifies language that would satisfy the disclaimer requirement for independent expenditures and the disclaimer requirement for campaign material. It also specifies language that would satisfy the statutory disclaimer requirements in other common situations not explicitly discussed in those statutes.

This is an independent expenditure in opposition to(insert candidate name or names) prepared and paid for by (insert name of entity participating in the

07/13/2017

expenditure),(insert address). It is not approved by any candidate nor is any candidate responsible for it.

Subp. 2. Independent expenditures in support of candidate. An independent expenditure in support of a candidate that uses the language below in the communication satisfies the disclaimer requirements in Minnesota Statutes section 10A.17, subdivision 4, and Minnesota Statutes section 211B.04:

This is an independent expenditure in support of(insert candidate name or names) prepared and paid for by(insert name of entity participating in the expenditure),(insert address). It is not approved by any candidate nor is any candidate responsible for it.

Subp. 3. Independent expenditures without cost. If an independent expenditure is produced and disseminated without cost, the words "and paid for" may be omitted from the disclaimer.

Subp. 4. Independent expenditures supporting one candidate and opposing another candidate. An independent expenditure that supports one candidate and opposes another candidate that uses the language below in the communication satisfies the disclaimer requirements in Minnesota Statutes section 10A.17, subdivision 4, and Minnesota Statutes section 211B.04:

This is an independent expenditure in support of(insert candidate name or names) and in opposition to (insert candidate name or names) prepared and paid for by(insert name of entity participating in the expenditure),(insert address). It is not approved by any candidate nor is any candidate responsible for it.

Subp. 5. Independent expenditures supporting more than one candidate or opposing more than one candidate. When an independent expenditure that requires a disclaimer under Minnesota Statutes section 10A.17, subdivision 4, supports more than one candidate or opposes more than one candidate, the disclaimer requirements in section 10A.17, subdivision 4, and Minnesota Statutes section 211B.04 are satisfied if the disclaimer

- A. lists the name of each candidate supported or opposed by the communication; or
- B. uses the phrase "the candidates named" in place of the list described in item A.

Subp. 6. Independent expenditures; more than one participant. When more than one entity participates in making an independent expenditure that requires a disclaimer under Minnesota Statutes section 10A.17, subdivision 4, the name of every participating entity must be included in the disclaimer. The address of each entity must be listed after the entity's name.

Subp. 7. Campaign material; more than one participant. When more than one entity participates in the preparation or dissemination of campaign material that requires a disclaimer, under Minnesota Statutes section 211B.04, paragraph (a), the name of every participating entity must be included in the disclaimer. The address of each entity must be listed after the entity's name.

Subp. 8. Disclaimer requirements; services for a constituent. Communications prepared as services for a constituent under Minnesota Statutes section 10A.01, subdivision 26, paragraph (6), must include the disclaimer required by Minnesota Statutes section 211B.04

07/13/2017

when the communications are disseminated after adjournment sine die of the legislature in the election year for the office held.

Subp. 9. Disclaimer requirements; conspicuous type and prominent display. A disclaimer in a written communication satisfies the requirement in Minnesota Statutes section 10A.17, subdivision 4, that an independent expenditure disclaimer be in conspicuous type and the requirement in Minnesota Statutes section 211B.04 that campaign material prominently include a disclaimer when the disclaimer meets the following type size requirements:

- A. For written communications other than an outdoor sign, website, or social media page, the disclaimer is printed in at least 8 point type.
- B. For written communications on a website or social media page, the disclaimer is printed in the same point type as the text in the body of the website or social media page.

Subp. 10. Disclaimer requirements; websites and social media pages. The disclaimer requirements in Minnesota Statutes section 10A.17, subdivision 4, and Minnesota Statutes section 211B.04 are satisfied for an entire website or social media page when the required disclaimer appears once on the homepage of the site.

Subp. 11. Disclaimer requirements; outdoor signs. For written communications on an outdoor sign, the disclaimer must be set apart from and printed in a color that is in high contrast to the other contents of the communication.

4525.0330 SUBMISSION TO BOARD; MATTERS UNDER STAFF REVIEW RESOLVED BY CONCILIATION AGREEMENT.

Subpart 1. Matter under staff review resolved by conciliation agreement. A matter under staff review that is resolved by conciliation agreement under part 4525.0320 must be presented to the board for approval at a meeting closed to the public under part 4525.0200, subpart 5.

The respondent must be given an opportunity to be heard by the board prior to the board's decision regarding the agreement.

The executive director must send notice of the meeting to the respondent. The notice must be sent not later than the time that the agreement is provided to the board and must include a copy of the agreement. The notice must include the date of the meeting at which the board will consider the matter and a statement that the respondent has the opportunity to be heard by the board before the board's determination regarding the agreement.

A conciliation agreement made under part 4525.0320 to resolve a matter under staff review is final only after the board approves the agreement.

If the board does not approve a conciliation agreement to resolve a matter under staff review, the board must lay the matter over until its next meeting and:

- A. provide guidance and direct the executive director to continue the staff review; or

Commented [PJ(11): The font sizes and outlined box requirements were removed because they did not fit all written communications. The current provisions create safe harbors for three types of commonly-used communications.

Commented [PJ(12): This provision is added to provide some guidance for disclaimers on outdoor signs. Due to the variation in size and message for these communications, it was difficult to craft type size requirements that would fit all of these types of signs.

Commented [PJ(13): The amendments to parts 4525.0330 and 4525.0340 make it possible for staff reviews to be resolved immediately through closure or the prompt issuance of findings.

07/13/2017

B. direct the executive director to prepare the matter for resolution by the board without an agreement pursuant to part 4525.0340.

If an agreement proposed under this subpart is not approved by the board, any admissions by the respondent and any remedial steps taken or agreed to by the respondent are not evidence of a violation in any subsequent proceeding.

Subp. 2. **Matter under staff review resolved; no violation.** The executive director must close a matter under staff review when the staff review establishes that no violation of the campaign finance laws has occurred. The executive director must report the closure of the matter to the board at a meeting closed to the public under part 4525.0200, subpart 5, and must send notice of the closure to the respondent.

Subp. 3. **Matter under staff review resolved without formal investigation.** A matter under staff review that is resolved without a formal investigation under part 4525.0340 must be submitted to the board for approval at a meeting closed to the public under part 4525.0200, subpart 5.

The respondent must be given an opportunity to be heard by the board prior to the board's decision regarding the staff review.

The executive director must send notice of the meeting to the respondent. The notice must be sent not later than the time when the written document resolving the matter is provided to the board and must include a copy of the written document resolving the matter. The notice must include the date of the meeting at which the board will consider the matter and a statement that the respondent has the opportunity to be heard by the board before the board's determination regarding the resolution of the staff review.

A written document concluding a matter under staff review without a formal investigation is final only after the board approves the document.

If the board does not approve the written document resolving a matter under staff review without a formal investigation, the board must:

- A. provide guidance and direct the executive director to continue the staff review;
- B. initiate a formal investigation of the matter; or

C. direct the executive director to prepare the matter for resolution by the board pursuant to part 4525.0340.

If a written document resolving a staff review without a formal investigation under this subpart is not approved by the board, any admissions by the respondent and any remedial steps taken or agreed to by the respondent are not evidence of a violation in any subsequent proceeding.

4525.0340 SUBMISSION TO BOARD; BOARD-INITIATED INVESTIGATIONS AND NOT RESOLVED BY CONCILIATION AGREEMENT.

Subpart 1. **Submission to board.** The executive director must submit the following matters to the board for decision under this part:

07/13/2017

A. a matter under staff review that is not resolved by ~~conciliation agreement~~ under parts ~~4525.0320 and~~ 4525.0330; and

B. any other matter that the board is to consider for the authorization of a formal investigation, other than a matter arising from a filed complaint.

The submission must be in writing, must describe the potential violation involved, and must include any supporting information. The submission must explain the actions undertaken in any summary proceedings and any points of disagreement preventing resolution of the matter.

The respondent must be given an opportunity to be heard by the board prior to the board's decision regarding the submission.

The executive director must send notice of the submission to the respondent. The notice must be sent not later than the time that the submission is provided to the board and must include a copy of the submission. The notice must include the date of the meeting at which the board will consider the matter, and a statement that the respondent has the opportunity to be heard by the board before the board's determination regarding the submission.

Subp. 2 **Board action on submission.** When it receives a submission under this part, the board must take one of the following actions:

- A. provide guidance and direct the executive director to begin or to continue a staff review;
- B. dismiss the matter without prejudice;
- C. order a formal investigation of the matter; or
- D. issue findings, conclusions, and an order resolving the matter.

The board must consider the evidence in the executive director's submission and the information and arguments in any statement submitted by the respondent.

In making its determination, the board must consider the type of possible violation; the magnitude of the violation if it is a financial violation; the extent of knowledge or intent of the violator; the benefit of formal findings, conclusions, and orders compared to informal resolution of the matter; the availability of board resources; whether the violation has been remedied; and any other similar factor necessary to decide whether the matter under review warrants a formal investigation.

Unless the board directs the executive director to continue an existing staff review, the board's determination must be made in writing. The executive director must promptly notify the respondent of the board's determination.

[For text of subpart 3, see M.R.]