STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD

Findings and Order in the Matter of the Complaint by the Minnesota Jobs Coalition Regarding the Mark Dayton for a Better Minnesota Committee

The Complaint

On May 7, 2013, the Campaign Finance and Public Disclosure Board (the Board) received a complaint from Kevin Magnuson, attorney, representing the Minnesota Jobs Coalition (MJC) regarding the Mark Dayton for a Better Minnesota Committee (the Committee). The complaint states:

> The Minnesota Jobs Coalition…files this complaint against "Mark Dayton For A Better Minnesota," the campaign committee for governor Mark Dayton…for violating Minnesota Statute…by failing to disclose unpaid campaign travel expenses in its year-end Report of Receipts and Expenditures for 2012. Specifically, the Dayton Campaign failed to report a $2,802 obligation it incurred when on October 24, 2012 Governor Dayton flew on a State of Minnesota airplane to Bemidji and then to International Falls to attend campaign events. Instead, it wrongly and misleadingly listed the 2012 expense as a January 3, 2013 travel reimbursement to the State on its 2013 quarterly report to the Minnesota State Campaign Finance and Public Disclosure Board… The Dayton Campaign also has failed to report additional obligations to reimburse the State of Minnesota for other campaign uses of the State's aircraft in 2012.

The MJC elaborated on the Committee's alleged failure to timely report the October 24, 2012, travel cost by providing:

> During the 2012 legislative elections, Governor Dayton and the Dayton Campaign committee campaigned to elect DFL legislators. On October 24, 2012, Governor Dayton flew on the State's aircraft to Bemidji, where, according to the *Minneapolis Star Tribune*, he conducted some unspecified "state-related business" but also attended a DFL rally… He then flew on the State's aircraft to International Falls for the sole purpose of attending a DFL fish-fry… [A] Dayton Campaign spokesperson…initially stated that the campaign would reimburse the State for half of the $3,312 it cost the State for the Governor to use the aircraft. The next day, the Dayton Campaign told the *Star Tribune* that Governor Dayton's use of the State's plane was actually 80% campaign-related and that it would reimburse the State of Minnesota $2,118 for the flights…
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> However, the Dayton Campaign failed to report this State aircraft expense in its year-end Report of Receipts and Expenditures for 2012…The year-end report represented that Governor Dayton had no unpaid campaign expenditures whatsoever for the year

> 2012. The Dayton Campaign subsequently filed three amended reports for 2012…none listed the trip on the State's aircraft…
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> In a 2013 first quarter report, filed with the Board on April 15, 2013, the Dayton Campaign reported the…travel reimbursement expense for the first time. However, rather than amend their 2012 reports, the campaign listed the $2,118 expense and another travel reimbursement to the State…as January 3, 2013 expenditures…The Dayton Campaign's 2013 filing is troubling because it falsely reports that the expenses related to the 2012 trip occurred in January 2013. Moreover, the Dayton Campaign apparently paid the October 24, 2012 obligation to the State on January 3, 2013 and therefore clearly was aware of the expenditure when they filed their 2012 year-end report…

The complaint further alleges that the Committee failed to report two other 2012 travel expenses related to the use of a state airplane. The MJC specified the two trips it believes the Committee failed to report as campaign expenditures:

> On September 28, 2012, Governor Dayton traveled to Willmar on a state-owned aircraft… The *West Central Tribune*…reported that Governor Dayton met with a dozen community members to discuss economic development and then later held a campaign event for Willmar-area DFL candidates. …Because only half of this trip constituted official state business, the Dayton Campaign owes the State half of the cost flying on the State's aircraft, which MJC estimates to be at least $642.00.
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> On October 20, 2012, Governor Dayton traveled to the Brainerd Lakes area on state–owned aircraft…. According to the Brainerd Dispatch, Governor Dayton campaigned for Brainerd-area DFL candidates on that date…Governor Dayton also met with local leaders to discuss tourism… Because only half of this trip arguably constituted official state business, the Governor's campaign owes the State at least $768.00.
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> The Dayton Campaign should have itemized and reported the paid or unpaid expenses of these two trips in its 2012 reports…. It did not. MJC believes that the appropriate reimbursement to the State of Minnesota when the Governor uses the state-owned aircraft to attend a campaign event while also arguably conducting state business in the same location should be half the cost of the flight. The Dayton Campaign should have listed these expenses on his 2012 campaign finance reports.

In support of the allegations the MJC supplied copies of the newspaper stories referenced in the complaint, flight logs for the use of the state plane described in the complaint, a Minnesota Department of Transportation document on calculating costs for using a state-owned aircraft, copies of reports and amendments filed by the Committee in 2012, and a voluntary campaign finance statement for the first quarter of 2013 filed by the Committee.

Responses and Amended Reports from the Mark Dayton for a Better Minnesota Committee

Unknown to the complainant, the Committee filed an amendment to the 2012 year-end Report of Receipts and Expenditures on May 6, 2013. The amendment, in the form of a letter from Shelli Hesselroth, treasurer, states:

> The Committee received two invoices in December 2012 that were inadvertently omitted from the unpaid obligations schedule on the year-end report. Please amend the report to include these two bills as unpaid obligations… State of Minnesota…12/19/2012 $684.00 Purpose: Air Travel…12/19/2012 $2,118.00 Purpose: Air Travel.

The Board notified Governor Dayton of the complaint by letter dated May 8, 2013. Board staff was notified that Charles Nauen, attorney, would be representing the Committee for the purposes of the Board investigation. Because of difficulty in obtaining information needed to respond to the complaint Mr. Nauen asked for additional time to respond by e-mail dated May 31, 2013.

The Committee responded to the complaint by letter dated July 30, 2013. The letter states:

> The Complaint addresses three trips, each of which included an official event and one or more campaign-related events. …the campaign has instituted a policy of reimbursing the State for a portion of the travel costs with the amount of the reimbursement depending upon the proportion of official and campaign related events…
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> The October 20, 2012, trip to Brainerd/Nisswa referenced in the Complaint included both an official event and a campaign-related event. The campaign received and paid an invoice for $684 which is one-half of the costs of this trip. As the Complaint acknowledges, the invoice was paid on January 3, 2013 and the payment is reflected in the First Quarter 2013 Report.
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> The October 24, 2012, trip referenced in the Complaint included an official event and a campaign-related event in Bemidji and a campaign-related event in International Falls. The campaign received and paid an invoice for $2,118 which is one-half of the costs of a round trip to Bemidji plus all of the additional costs for the trip to International Falls. …the invoice was paid on January 3, 2013 and the payment is reflected on the First Quarter 2013 Report.
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> The Governor also travelled to Willmar for an official event and campaign-related event on September 28, 2012. The campaign was not invoiced for this trip. The campaign now has received an invoice for $612.00 for its share of this trip which will be paid and reported on its Third Quarter 2013 Report.

> The Complaint also alleges that the expenses for all of these trips should have been reflected as outstanding debts on the Year-End 2012 Report. The Year-End 2012 report was amended to reflect the Brainerd/Nisswa trip and the Bemidji/International Falls [trip] before the complaint was received…. The Year-End 2012 report will be similarly amended to reflect the Willmar trip.

On August 1, 2013, the Committee filed a letter amendment to the Committee's 2012 year-end Report of Receipts and Expenditures. The amendment states:

> The Committee recently received an invoice for travel in September 12, 2012. The invoice was not received in 2012 and, therefore, was not included in the unpaid obligations schedule on the year-end report… 9/12/2012 $612.00 Purpose: Air Travel…State of Minnesota.

Board staff noted that the amounts paid by the Committee for use of a state airplane were slightly different than the amounts owed as calculated by the complainant. To resolve the discrepancy staff asked for copies of the invoices received by the Committee for the trips. Additionally, the Committee was asked to further explain why the trips were not disclosed as unpaid bills on the initial filing of the 2012 year-end Report of Receipts and Expenditures.

On August 6 copies of the invoices received by the Committee for use of the state airplane were provided to the Board. Two of the invoices were issued on December 19, 2012; the invoice for the Willmar trip was issued to the Committee on July 30, 2013.

In explanation of why the cost for use of the state airplane was not included in the 2012 year-end Report of Receipts and Expenditures the Committee states:

> The amounts were not reported as unpaid obligations on the Year-End 2012 Report due to inadvertent error. The first two invoices…were received in late-December 2012 and paid promptly in early January, 2013….This error likely is due to the fact that the invoices were paid in the early days of 2013 and well before Year-End 2012 report was submitted…The final invoice…was not received until this week and, for that reason, was not included as an unpaid obligation on the Year-End 2012 Report.

On September 5, 2013, the Committee filed a letter to correct errors in the previous amendments to the Committees 2012 year-end Report of Receipts and Expenditures. The letter states:

> On May 6, 2013, the Committee submitted a letter amendment to its Year end 2012 report disclosing two obligations incurred in 2012. The letter referenced the invoice date of December 19, 2012, rather than the date the expenses were incurred. Please amend the report to include these two obligations as follows …10/20/2012 $684.00 Purpose: Air Travel…10/24/2012 $2,118.00 Purpose: Air Travel.

The letter further provides:

> ... [T]he Committee submitted a letter amendment to its Year End 2012 report disclosing an additional obligation incurred in 2012 but which was not invoiced until July 2013. The letter mistakenly referenced September 12, 2012, as the date the obligation was incurred. Please amend the report to describe the obligation as follows…9/28/2012 $612 Purpose: Air Travel.

The Board reviewed the complaint and status of the investigation and then laid the matter over at its June 10, 2013, and August 6, 2013, meetings.

Board Analysis

The MJC complaint correctly identified that the 2012 year-end Report of Receipts and Expenditures filed by the Committee on January 31, 2013, and as amended through March 11, 2013, failed to disclose the three trips discussed above. The trips occurred in 2012, and are acknowledged by the Committee to have been, in part, campaign expenditures for which the Committee was responsible. The Committee does not dispute the conclusion that the cost of the trips should have been disclosed on the Committee's 2012 year-end Report of Receipts and Expenditures.

The question for the Board then becomes why the cost of the trips were not included in the Committee's report. Reports to the Board are certified by the treasurer as true and complete; a treasurer who deliberately omitted information or provided false information on a report is subject to a civil penalty imposed by the Board of up to $3,000 and is also subject to criminal prosecution for a gross misdemeanor. These penalties do not apply if required information was inadvertently left off of a report, or if the report is inaccurate because the treasurer did not understand one or more of the reporting requirements of Chapter 10A.

Based on the responses to the complaint provided by Mr. Nauen and the amendments filed by Ms. Hesselroth, the Board concludes there is no basis to believe that the costs of the trips were deliberately left off the report. Instead, the record before the Board points to both inadvertent human error and a misunderstanding of the reporting requirements for campaign expenditures.

The inadvertent omissions occurred when the treasurer left off the two invoices that were received in December of 2012 for use of a state airplane. The Board accepts that the omission was inadvertent because, as documented in the complaint, a Committee spokesperson provided information to the media on the cost of the Bemidji-International Falls trip when it occurred, and also provided information on how the reimbursement was calculated. Given that the Committee publically acknowledged the expenditures in October there would be no reason to hide the expenditures invoiced in December by deliberately omitting them from the year-end report. The Board also notes that the cost of the Bemidji-International Falls trip, and the Brainerd-Nisswa trip were disclosed by the Committee in a voluntary disclosure of Committee activity provided to the Board in April of 2013, prior to the filing of the MJC complaint.

The reason stated for omitting the Willmar trip from the 2012 year-end report, because the Committee did not receive an invoice until July of 2013, indicates a misunderstanding of the reporting requirements for unpaid expenditures. Chapter 10A provides that a committee incurs an expenditure on the date that the committee becomes obligated to pay an expense.

Obligations that are incurred by a committee during the time period of a report must be disclosed, even if an invoice for an unpaid expenditure has not been received.[1]

In this case the Committee incurred the costs of the Governor traveling on a state airplane for purposes partially related to campaigning during September and October of 2012. At the time the trips occurred the treasurer should have been informed of the expenditures with information on the date, vendor, purpose of the expenditures, and the amount of the expenditures. If the exact costs of the trips were unknown on the date they occurred then a best estimate for the obligation should have been provided to the treasurer. The treasurer should have used the best estimate of the cost to report the expenditure in lieu of the invoice for the Willmar trip that was not received by the reporting deadline.

Unintentional reporting errors that are corrected by amendments to previously filed reports are not penalized under Chapter 10A as long as the amendments are filed promptly after the treasurer becomes aware of an error. In the present case, the Committee timely filed the amendments needed to correct the 2012 reporting errors identified by the complainant.

Based on the above Review and Analysis and the relevant statutes, the Board makes the following:

Findings

1. The Mark Dayton for a Better Minnesota Committee filed a 2012 year-end Report of Receipts and Expenditures that omitted campaign expenditures that were incurred during the reporting year.

2. The reporting errors of the Mark Dayton for a Better Minnesota Committee were the result of mistakes by the treasurer.

Conclusion

1. At the time the Mark Dayton for a Better Minnesota Committee filed the 2012 year-end Report of Receipts and Expenditures the report was incomplete, resulting in a violation of the reporting requirements of Minnesota Statutes section 10A.20. The violation was corrected by amending the report.

2. The omissions on the 2012 year-end report were not knowingly made within the meaning of Minnesota Statutes section 10A.025, subd. 2, and therefore no violation of that statute results.

3. No civil penalty is applicable under the facts and conclusion of this mater.

[1] As required by Minnesota Statutes sections 10A.01, subdivision 9, 10A.20, subdivision 3(i), and Minnesota Rules, part 4503.1800, subpart 2.

Based on the above Findings and Conclusion, the Board issues the following:

Order

The Board investigation of this matter is concluded and hereby made a part of the public records of the Board pursuant to Minnesota Statutes section 10A.02, subdivision 11.

Dated: September 10, 2013 /s/ Deanna Wiener

Deanna Wiener, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes

Minnesota Statutes section 10A.01

Subd. 9. 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….

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

4503.1800 REPORTING REQUIREMENTS.

Subp. 2. Expenditures and noncampaign disbursements. Legislative, statewide, and judicial candidates, party units, political committees and funds, and committees to promote or defeat a ballot question must itemize expenditures and noncampaign disbursements that in aggregate exceed $100 in a calendar year on reports submitted to the board. The itemization must include the date on which the committee made or became obligated to make the expenditure or disbursement, the name and address of the vendor that provided the service or item purchased, and a description of the service or item purchased. Expenditures and noncampaign disbursements must be listed on the report alphabetically by vendor.