

**STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD**

PRIMA FACIE DETERMINATION

**IN THE MATTER OF THE COMPLAINT OF JAMES SANBORN REGARDING THE BOB FREY MN
COMMITTEE:**

The undersigned Chair of the Minnesota Campaign Finance and Public Disclosure Board has made a prima facie determination that the complaint submitted in the aforementioned matter is insufficient to allege a prima facie violation of Chapter 10A.

The Bob Frey MN committee is the principal campaign committee of Bob Frey, a candidate for the Minnesota House of Representatives. The complaint alleges that the committee violated Minnesota Statutes Section 10A.15, subdivision 3a, which prohibits a treasurer from depositing a contribution that on its face exceeds the amount that the donor may contribute to the committee. The complaint also alleges that the committee violated Minnesota Statutes Section 10A.27, subdivision 10, which prohibits a committee from accepting aggregate contributions in excess of specified limits. For the Frey committee, the limit on contributions from the candidate in 2014 was \$5,000.

Determination:

Section 10A.15, subdivision 3a prohibits a treasurer from depositing a contribution that "on its face" exceeds the applicable limit. The deposit in question was in the amount of \$4,559.93, which is, on its face, less than the limit of \$5,000. Thus the complaint does not allege a prima facie violation of Section 10A.15, subdivision 3a.

The second allegation of the complaint is that the committee accepted, in aggregate, contributions from Bob Frey that exceeded the \$5,000 limit.

Reports filed with the Board by the Frey committee disclose that Mr. Frey loaned his committee \$9,000 on June 2, 2014. A prior complaint by Mr. Sanborn, complainant herein, alleged that the loan violated Chapter 10A because it exceeded a \$5,000 limit on the amount a candidate may loan the candidate's committee. The Board determined that there was probable cause to believe that this loan did, in fact, violate the Chapter 10A provision regarding excessive loans. However, the Board also recognized that it had historically and consistently applied a related administrative rule to permit excessive loans as long as the loan balance was within the limit at the end of the year. As a result, the Board dismissed the complaint without sanctions.

The Frey Committee's year-end report shows that on December 30, 2014, Bob Frey made a contribution of \$4,559.93 to his committee and on the same day used that money plus money raised from other donors to pay back the entire \$9,000 loan.¹

¹ While it is typically difficult to say that certain money was used for a certain purpose, the Board can say confidently that the Frey committee used Bob Frey's contribution to pay off the \$9,000 loan because it took all of the committee's existing cash plus the new Frey contribution to pay off the loan. With its year-end report, the committee terminated its registration with a zero dollar balance.

Complainant apparently asserts that on December 30, 2014, there was some moment in time when the committee possessed the \$9,000 Frey loan plus the \$4,559.93 contribution for a total of \$13,559.93, resulting in a new violation of the aggregate limit on loans and contributions.

Although he alleges a violation of Minnesota Statutes Section 10A.15, subdivision 3a, the complainant either ignores, or is unaware, of subdivision 3 of the same section. This subdivision provides a mechanism for treasurers to remedy temporary violations. A treasurer may return a violating contribution or otherwise remedy a violation during the 90 days after the problem arose. The \$4,559.93 contribution was only conditionally accepted on December 30. Ninety days later, when it was deemed accepted under the statute, the loan balance was zero and there was no violation.

The Chair notes two other facts that militate against complainant's tenuous position. First, Mr. Frey did not even have to make a cash infusion into his committee on December 30. He could have simply re-classified \$4,559.93 as a contribution. Any time a loan is forgiven, it becomes a contribution and no actual financial transaction is required. See, Minnesota Statutes Section 10A.20, subdivision 3e. Using this approach, the conversion of a loan to a contribution is instantaneous. There is no basis to treat any differently the forgiving of a loan through an exchange of checks with the lender on the same day.

Finally, complainant's recommended approach would lead to absurd results; something the rules of statutory construction prohibit. The question of whether there is a violation or not would hinge on the exact timing of the transfer of checks. If the committee handed Mr. Frey the loan repayment before Mr. Frey handed the committee the check, there would be no violation. And if the exchange takes place essentially simultaneously what is the result? Are we required to determine who let go of their check first? This observation is to point out that complainant is grasping at straws; an insufficient basis to result in a finding that a complaint states a prima facie violation of Chapter 10A.

Both allegations of the complaint having been found insufficient to state a prima facie violation, the complaint is dismissed.

/s/ George A. Beck
George A. Beck, Chair
Campaign Finance and Public Disclosure Board

Dated: 3/17, 2015