

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

**Findings, Conclusions, and Order in the Matter of the
Joe Hoppe Volunteer Committee**

Background

On June 17, 2014, Board staff notified the Joe Hoppe Volunteer Committee (the Committee) of an informal staff review of certain reimbursements made to Rep. Hoppe. On its 2013 year-end report of receipts and expenditures the Committee disclosed a \$2,500 reimbursement to Rep. Hoppe for campaign expenditures without providing detail about what was purchased. The Committee also disclosed two reimbursements totaling \$8,200 for noncampaign disbursements that were generally identified as payments for the costs of serving in office, but which did not describe the goods or services purchased.

Reimbursements to Rep. Hoppe reported in 2011 and 2012 were also reported without detail about the vendors or about the goods or services purchased. The 2011 and 2012 reports stated “see attached spreadsheets” or “see attached lists”. These attachments presumably disclosed the items for which Rep. Hoppe was being reimbursed. However, the Board's records contained no evidence that any supporting spreadsheets had been submitted.

To resolve what appeared to be reporting deficiencies that might be resolved by amendment, the Committee's treasurer of record was instructed to amend the 2013 report to itemize any aggregate expenditures to vendors of more than \$200 that were initially paid by Rep. Hoppe and then later reimbursed with Committee funds. The Committee was also directed to submit the spreadsheets and lists referenced in the 2011 and 2012 reports.

After no response was received, a second letter was sent to the Committee's treasurer of record on July 29, 2014, which reiterated the request for additional information. Again, no amended report or requested information was received.

On October 21, 2014, Rep. Hoppe was informed that because no response to the informal review had been provided, and no required amendments had been filed, staff would ask the Board at its upcoming November meeting to begin an audit and investigation of the Committee's financial activity for the reporting years 2011 through 2014. Rep. Hoppe was offered the opportunity to appear at the meeting and explain why an investigation was not necessary. Rep. Hoppe did not appear.

The Board authorized an investigation of the reimbursements made to Rep. Hoppe during the years 2011 through 2014, which totaled \$34,532. By year the reimbursements were reported as follows: \$6,506 for noncampaign disbursements in 2011; \$11,258 for noncampaign disbursements in 2012; \$2,500 in campaign expenditures and \$8,200 in noncampaign disbursements in 2013; and \$6,068 in noncampaign disbursements in 2014.¹ In addition, the investigation was to examine whether the Committee's use of campaign funds complied with Chapters 10A and 211B.

Campaign committees are required to maintain records documenting the collection and use of committee funds for four years from the date a report is filed. The Board limited the

¹ The 2014 year-end report of receipts and expenditures had not been filed when the investigation was authorized by the Board. Reimbursements made in 2014 were included in the investigation based on a \$1,500 reimbursement to Rep. Hoppe for noncampaign disbursements disclosed without itemization on the 2014 pre-general-election report.

investigation of the Committee's reimbursements to Rep. Hoppe to the years for which the Committee was required to have records. Rep. Hoppe was notified of the investigation on November 21, 2014, and was again requested to provide the spreadsheets referenced in the Committee's reports.

On January 7, 2015, Rep. Hoppe provided a spreadsheet of all expenditures he made on behalf of the Committee in 2012. Based on this cooperation, and in deference to the time demands of the legislative session on Rep. Hoppe, the investigation was deferred until June 2015.

On June 1, 2015, Rep. Hoppe met with Board staff to discuss the outstanding issues and how to move forward with the matter.

On July 6, 2015, Rep. Hoppe provided spreadsheets of all the expenditures that he had made on behalf of the Committee in 2011, 2013, and 2014. Staff's review of the spreadsheets raised new concerns regarding the accuracy of the campaign finance reports filed on behalf of the Committee during all four years. Although the spreadsheets listed all items purchased, including those below the \$200 disclosure threshold, there was no indication of which noncampaign disbursement category justified each expenditure. Committees must provide the appropriate noncampaign disbursement category to explain why the purchase is something other than a campaign expenditure.

In particular the 2013 spreadsheet could not be tied back to the report without the required noncampaign disbursement categories. In that year Rep. Hoppe was reimbursed for both campaign expenditures and noncampaign disbursements. Without a noncampaign disbursement category for an item, Board staff was not able to identify which items in the 2013 spreadsheet were campaign expenditures and which were noncampaign disbursements.

By letter dated September 10, 2015, Rep Hoppe was asked to categorize the noncampaign disbursements, provide receipts or invoices for selected items listed in the spreadsheet, and explain the rationale used by the Committee to justify the reimbursement of some purchases made by Rep. Hoppe.

On September 15, 2015, Rep. Hoppe made himself the Committee's treasurer.

On October 26, 2015, Rep. Hoppe provided copies of receipts or invoices for most of the items requested by staff and spreadsheets with a noncampaign disbursement category designation. Upon review, many of the noncampaign disbursement categories claimed for purchases on the spreadsheets were clearly inconsistent with the definition of those categories provided in statute. Staff met with Rep. Hoppe again on December 2, 2015, to discuss the status of the investigation and explain the problem with the noncampaign disbursement categories reported in the spreadsheets. Staff requested that Rep. Hoppe reevaluate the noncampaign disbursement categories reported for the reimbursements and submit amended spreadsheets by January 7, 2016.

Despite repeated Board requests a response was not provided by Rep. Hoppe in the following months. Board staff met again with Rep. Hoppe on April 8, 2016, to provide assistance on the categorizing of noncampaign disbursements reported in 2011. An updated spreadsheet for 2011 was submitted by Rep. Hoppe on April 25, 2016. Updated spreadsheets for 2012, 2013, and 2014 were submitted on May 12, 2016.

Statutory Authority and Related Administrative Rules

Minnesota Statutes section 211B.12 provides that money collected by campaign committees may be used for specific political purposes, or for purposes consistent with the noncampaign disbursements defined in Chapter 10A. In addition, Minnesota Statutes section 211B.12 limits the use of campaign committee funds with a general prohibition that states, “Money collected for political purposes and assets of a political committee or political fund may not be converted to personal use.” Minnesota Statutes section 10A.20, subdivision 3 (h), requires committees to provide the purpose of each expenditure if the amount purchased from a vendor exceeds \$200 over a calendar year. The descriptions provide the detail necessary to determine whether a purchase was a proper use of committee funds under Chapters 10A and 211B.

The expenses incurred by a candidate’s committee are generally categorized as either campaign expenditures, which are made to influence the nomination or election of the candidate, or as noncampaign disbursements, which are a separate category of spending identified in statute. Noncampaign disbursements do not count against the committee’s campaign expenditure limit that applies if the candidate voluntarily signed the public subsidy agreement. There are 22 noncampaign disbursement categories recognized in Minnesota Statutes section 10A.01, subdivision 26. This statute provides in part, “The board must determine whether an activity involves a noncampaign disbursement within the meaning of this subdivision.”

The Board is also authorized to recognize additional noncampaign disbursements through administrative rule or advisory opinion. In Minnesota Rules 4503.0900 the Board has recognized six additional noncampaign disbursement categories that are applicable to all candidates.

Noncampaign disbursements must be itemized on a candidate’s campaign finance report if the amount purchased from a vendor over a calendar year exceeds \$200. Itemized noncampaign disbursements must include sufficient information to both identify the goods or services purchased, and to justify the noncampaign disbursement category claimed for the purchase.²

Many of the noncampaign disbursements provided in statute are specific as to what items may be included in the category, and therefore it is a straightforward matter to determine if a purchase qualifies. However, some of the categories are broadly stated, and campaign committees have asked for clarification regarding these categories in advisory opinion requests to the Board.

Advisory opinions are issued as guidance and are a safe harbor only to the requestor of the opinion. While advisory opinions provide understanding on the Board’s interpretation of statutory requirements to other committees with similar questions, the opinions are not binding on those committees. If the Board believes that the guidance stated in an advisory opinion should be applicable to more than the requestor the Board must adopt an administrative rule to achieve that end. The process of adopting administrative rules provides an opportunity for the public, the legislature, the Office of Administrative Hearings, and the Governor to evaluate the proposed rules and provide input to improve the content.

This limitation on advisory opinions is specifically noted because, in some cases, the Committee reported purchases for noncampaign disbursements that were not consistent with the guidance provided by the Board in advisory opinions for similar expenditures. While the Board concludes

² See Minnesota Statutes section 10A.20, subdivision 3(m), and Minnesota Rules 4503.0900, subpart 3.

that the Committee's use of certain noncampaign disbursement categories is not permitted by statute, it acknowledges that the Committee was not bound by the advisory opinions and that the Board has not adopted administrative rules to make those opinions binding. Therefore, although the Board finds the use of certain noncampaign disbursements to be impermissible under the applicable statutes, it will not impose a civil penalty for those uses nor will it require amendments to the Committee's reports in those cases.

Campaign funds are contributions made to a committee, often by individual citizens, to assist in getting the candidate elected. For that reason, the Board concludes that statutes permitting the use of committee funds for purposes not related to influencing the candidate's election should be applied narrowly. Given the previous lack of clear guidance on the scope of some noncampaign disbursement categories, the Board will develop and distribute bulletins and training materials on noncampaign disbursements. Additional guidance in statute or the adoption of additional administrative rules by the Board may be needed to provide consistent enforcement of some categories.

Noncampaign Disbursements Reported by the Committee

Many noncampaign disbursements reported by the Committee were consistent with the clear language of the statute or administrative rule used to categorize the purchase. Others were consistent with broader interpretations expressed in advisory opinions issued by the Board. These disbursements were excluded from further review early in the investigation.

The Committee's use of other noncampaign disbursement categories was not as clear. As part of the investigation the following noncampaign disbursements categories were reviewed. The wording and identifying number of the noncampaign disbursement provided in Minnesota Statutes section 10A.02, subdivision 26, is provided in bold.

(10) Payment by a principal campaign committee of the candidate's expenses for serving in public office, other than for personal uses

The Committee reported unusually large expenditures for three types of purchases that were categorized as costs of serving in office: cell phone plans, Chaska Rotary Club membership dues and fees, and food purchases for legislative staff.

Cellphone Plan - During 2011 – 2014 the Committee reimbursed Rep. Hoppe \$9,147.49 for cellphone plan charges. The plan provided four lines, one for Rep. Hoppe and three lines for family members. The reimbursement did not separate out the portion of the bill related to the phone used by Rep. Hoppe for communication related to legislative service and the cellphone service provided to the other lines on the plan. The Board concludes that the use of Committee funds for cellphone access other than the service provided to Rep. Hoppe results in an impermissible personal benefit.

The best practice for committees with respect to cell phone plans is to have a separate account for the candidate's phone. However, if a legislator uses committee funds to pay for a portion of a family cell phone plan, then the amount the committee pays must reflect only the use attributable to the legislator.

To avoid a conversion of committee funds to personal use a campaign committee may either: (1) track the data, text, and phone calls used each month by each phone on the plan to determine the portion of the plan cost that should be allocated to the legislator's phone for that month and then add that amount to the line cost for the legislator's phone, or (2) use a pro-rata

division of the entire monthly bill (the total cost divided by the number of phones on the plan). The latter approach, although not as precise as the former, is sufficient to ensure that no significant personal benefit is being paid for with campaign funds and has the benefit of being easy to calculate for a treasurer.

Rep. Hoppe has verbally stated that the cellphone plan was an inadvertent error that occurred, in part, because of a change in the cellphone service provider and has agreed to pay back the committee for that portion of the cellphone plan not related to his phone line. Rep. Hoppe has not provided the monthly cellphone bills from 2011 through 2014 needed to track the data, text, and phone calls used by each line. Therefore the Board will use option 2 above to require that Rep. Hoppe reimburse the Committee 75% of the cellphone plan costs paid by the Committee during the years 2011 through 2014. This will require a payment to the Committee of \$6,860.62.

Although the Committee's expenditures in 2015 are not a part of this investigation, the Committee should also examine the payments made for the cellphone plan in 2015 to ensure it complies with one of the two calculations provided above. If a payment for the cellphone plan from Rep. Hoppe to the Committee is required, it should be reported on the Committee's 2016 pre-primary-election report of receipts and expenditures.

Rotary Club Membership Dues and Fees - From 2011 through 2014 the Committee reimbursed Rep. Hoppe \$6,219 for membership dues and other fees paid to the local Rotary Club. Belonging to a local organization like the Rotary Club can raise the profile of the candidate to voters in the candidate's district and generally serves as an opportunity to promote the campaign. For that reason the Board has not questioned campaign committees that disclosed membership dues to local organizations as a campaign expenditure.

Rep. Hoppe has categorized the Rotary Club payments as a cost of serving in office. The Board concludes that membership in this type of organization is not a cost of serving in office and will direct the Committee to file an amendment that reports the \$104 annual cost of membership as a campaign expenditure. The meetings of this organization are conducted with either breakfast or lunch served to all members in attendance. The meals are not an optional cost of membership. The cost of the meals, which is \$528 a year, may be reported as a noncampaign disbursement under the category of food or beverage consumed by the candidate while campaigning. The reimbursement of \$416 for four years of membership dues and \$2,112 for four years of meals served as a part of attending meetings will need to be itemized and reported as described above on amended reports of receipts and expenditures.

As part of the investigation Rep. Hoppe provided copies of invoices issued by the Rotary Club that listed items purchased through the organization in addition to membership dues and meals at meetings. The other items purchased through the organization were not required in order to be a member. The items purchased could provide personal benefit to Rep. Hoppe and therefore cannot be paid for with Committee funds. Therefore, Rep. Hoppe will be required to pay back the Committee \$3,691, which is the difference between the total reimbursements made to Rep. Hoppe for payment to the Rotary Club and the amount paid for membership fees and meals served with meetings.

Out of State Travel - Rep. Hoppe used the Committee's funds to attend National Conference of State Legislatures meetings and reported the costs as a cost of serving in office. This is consistent with the Board's longstanding recognition that the cost of attending conferences at

which subjects before the legislature are discussed may be paid for with committee funds and reported as a noncampaign disbursement.³

Rep. Hoppe also traveled to Washington DC in 2013 and 2014. During those trips Rep. Hoppe met with a Minnesota Congressional member's staff. Rep. Hoppe could not recall or document a specific issue or legislation that required him to make trips to Washington DC. Trips that are for general fact finding and relation building have not been viewed by the Board as a reasonable cost of office to be paid for with campaign committee funds.⁴ However, in both 2013 and 2014 Rep. Hoppe's expenditures for costs he believed related to serving in office were greater than the amount actually reimbursed by the Committee. Because the value of the items that were not reimbursed exceeds the cost of the trips to Washington DC, the Board will not require Rep. Hoppe to repay the Committee for the trips.

Meals for Legislative Staff - From 2011 through 2014 the Committee reimbursed Rep. Hoppe \$3,104.18 for meals provided to legislative staff. Rep. Hoppe explained that the meals were bought at occasions where he and his staff were discussing and working on issues related to legislation or to the operations of the legislative office.

The Board considered a similar scenario in Advisory Opinion 354, in which campaign committee funds were used to purchase meals for legislative office staff at an event at which training and discussion of office operations occurred.⁵ The opinion concluded that the meals were not an expected or reasonable cost of serving in office and that committee funds should not be used for that purpose. The conclusion of this opinion was not adopted as an administrative rule and, therefore, was not binding on any candidate's committee. The Board formally concludes here that the purchase of meals for legislative staff is outside of the costs of serving in office that may be paid for with campaign funds. Because this application of the statute, although stated in Advisory Opinion 354, has not been applied in an adjudicative matter, it will not be given retroactive application to the expenditures made by Rep. Hoppe.

(7) Payment for food and beverages consumed by a candidate or volunteers while they are engaged in campaign activities

From 2011 through 2014 the Committee reimbursed Rep. Hoppe \$2,048.71 for the purchases of food and beverages for volunteers or the candidate while engaged in campaign activities. This noncampaign disbursement category was used in a nonelection year and, in some cases, at restaurants outside of the Rep. Hoppe's district. Consequently, the Board asked the Committee to further explain its use of this category of noncampaign disbursement.

Rep. Hoppe explained that during non-election years the meals were provided at meetings with individuals who were writing campaign material for use during the election and with individuals who volunteered for the campaign in prior election years to plan out activities for the next election. The Board notes that there are no time constraints on this noncampaign disbursement category and that planning for an election may reasonably be considered to be a campaign activity.

However, the Board cautions that this category does not extend to the cost of meals or beverages provided as a thank you to volunteers and supporters.⁶ Before reporting

³ See Advisory Opinions 277 and 391 (issue 5).

⁴ See Advisory Opinion 390

⁵ See Advisory Opinion 354

⁶ Minnesota Statutes section 10A.01, subdivision 26 (13) provides that a candidate's committee may pay for the cost of one postelection party during the election year as a noncampaign disbursement.

expenditures with this noncampaign disbursement category, a committee treasurer should ensure that the purpose of the meeting qualifies as a campaign activity that supports the election of the candidate.

Reporting Requirements

The campaign finance reports filed by the Committee during the years 2011 through 2014 did not provide the required itemization and description of the items purchased by Rep. Hoppe and reimbursed by the Committee. Discussions with Rep. Hoppe as to why the reports were incomplete lead the Board to conclude that a knowing violation of the reporting requirements of Chapter 10A did not occur and that the omissions made in reporting the noncampaign disbursements were inadvertent.

Nonetheless, filing accurate and complete campaign reports to inform the public of the Committee's financial activity is a basic requirement of Chapter 10A. The Committee's reports for 2011 through 2014 have, to this point, failed to meet that requirement. The prolonged time between when the Board first asked for required amendments and the issuing of these findings leads the Board to conclude that Rep. Hoppe may not be in a position to file accurate and timely disclosure reports. In consultation with Board staff, Rep. Hoppe agreed that as a part of the resolution of this matter, the Board may issue an order requiring him to appoint a treasurer other than himself to be responsible for the recordkeeping and reporting requirements of Chapter 10A.

Under Minnesota Statutes section 10A.025, subdivision 4, Rep. Hoppe and the Committee have 10 days from the date of this order to submit amended reports for the years 2011 through 2014 that provide the required itemization and description of the reimbursements made to Rep. Hoppe. Failure to submit the amended reports by this deadline will result in the application of the late fees and civil penalties provided in section 10A.025, subdivision 4.

Other Issues Identified by the Investigation

The Board reviewed all reimbursements made to Rep. Hoppe by the Committee. Although not every reimbursement that was included on the spreadsheets is specifically discussed in this document, the order issued herein resolves all issues related to reimbursements made by the Committee to Rep. Hoppe through 2014.

Based on its investigation, the Board makes the following:

Findings of Fact

1. The Joe Hoppe Volunteer Committee is the principal campaign committee of Rep. Joe Hoppe.
2. Between 2011 and 2014 the Committee reimbursed Rep. Hoppe for a cellphone plan that provided \$6,860.62 in services to individuals other than Rep. Hoppe.
3. Between 2011 and 2014 the Committee's reimbursed Rep. Hoppe \$3,691.00 for the purchase of items through the local Rotary Club that were not membership dues or the required meals at Club meetings.

4. The Committee's year-end reports of receipts and expenditures for the years 2011 through 2014 did not accurately disclose and itemize its expenditures and the payments to Rep. Hoppe.

Based on the Findings of Fact, the Board makes the following:

Conclusions of Law

1. The \$10,551.62 in Committee reimbursements made to Rep. Hoppe between 2011 and 2014 for cellphone service for individuals other than Rep. Hoppe and for items purchased through the Rotary Club other than membership dues and the required meals at Club meetings resulted in an impermissible use of Committee funds under Minnesota Statutes section 10A.01, subdivision 26 (10), and Minnesota Statutes section 211B.12.
2. The Committee's reports of receipts and expenditures from 2011 through 2014 do not meet the disclosure requirements of Minnesota Statutes section 10A.20, subdivision 3, because the reports failed to itemize and provide required information on purchases made by Rep. Hoppe that were reimbursed by the Committee.
3. Rep. Hoppe improperly classified the payments for meals and beverages consumed by legislative staff as a cost of serving in office. This classification, although improper, was made in good faith and without any intent to improperly use Committee funds.
4. Rep. Hoppe improperly classified costs for travel and lodging to Washington DC as a cost of serving in office. This classification, although improper, was made in good faith and without any intent to improperly use Committee funds.

**Based on the preceding Findings of Fact and Conclusions of Law,
the Board issues the following:**

Order

1. Rep. Hoppe must personally reimburse the Committee \$10,551.62. This payment will reimburse the Committee for the campaign funds that were used for purposes not permitted by statute from 2011 through 2014. Rep. Hoppe must provide documentation within 30 days of the date of this order showing the deposit of the reimbursement into the Committee's account. In the alternative, Rep. Hoppe may, within 30 days of the date of this order, enter into a payment agreement with the Executive Director calling for payments to the Committee over a period not to exceed 24 months. Such a plan must include provisions for verification of the monthly payments and must include a provision that if a payment is late, the entire balance is immediately due.
2. The Joe Hoppe Volunteer Committee is directed to submit amended year-end reports of receipts and expenditures for 2011 through 2014 to resolve the reporting errors and omissions identified in these findings. The amended reports must be submitted within 10 days of the date of this order.
3. Rep. Hoppe must appoint an individual other than himself to serve as treasurer of the Committee. An amended committee registration naming the new treasurer must be submitted within 30 days of the date of this order.

4. If the Joe Hoppe Volunteer Committee does not comply with the provisions of this order, the Board's Executive Director may request that the Attorney General bring an action on behalf of the Board for the remedies available under Minnesota Statutes section 10A.34.
5. 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.022, subdivision 5 (a).

Dated: May 27, 2016

/s/ Christian Sande

Christian Sande, Chair
Campaign Finance and Public Disclosure Board