

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

FINDINGS, CONCLUSIONS, AND ORDER IN THE MATTER OF THE INVESTIGATION OF THE GOODHUE COUNTY REPUBLICAN PARTY OF MINNESOTA AND THE DAVID OSMEK VOLUNTEER COMMITTEE

Background

This investigation examined the activities of the Goodhue County Republican Party of Minnesota (the Goodhue RPM) and the David Osmek Volunteer Committee (the Osmek committee) in relation to a contribution by the Osmek committee to the Goodhue RPM. Although they were not subjects of the investigation, the transactions also involved Michael Goggin and the Michael Goggin for Senate committee (the Goggin committee), which was the committee supporting Michael Goggin's 2016 challenge to the incumbent senator in senate district 21.

Each year, after year-end reports of campaign receipts and expenditures are filed, the Board conducts a reconciliation in which it compares contributions reported by donors who are registered with the Board with the corresponding receipts reported by recipients. Except for transactions that cross over calendar years, each donor-reported contribution should match the corresponding recipient-reported contribution.

In conducting its reconciliation of the 2016 reports of the Goodhue RPM, the Goggin committee, and the Osmek committee, the Board identified the following discrepancies:

- The Goodhue RPM reported receiving \$625 from the Goggin committee while the Goggin committee did not report making any contribution to the Goodhue RPM;
- The Goodhue RPM reported contributing \$1,800 to the Goggin committee while the Goggin committee reported receiving \$1,175 from Goodhue RPM;
- The Goodhue RPM reported receiving \$1,000 from the Osmek committee while the Osmek committee reported donating only \$375 to the Goodhue RPM.

Board staff wrote to the Goodhue RPM treasurer on April 12, 2017, asking for an explanation of these discrepancies. The treasurer responded on April 25, 2017, explaining that the reports were correct but that various treasurers had reported the transactions, which in each case involved some form of refund, differently.

In his explanation, the Goodhue RPM treasurer indicated that on or about August 27, 2016, the Osmek committee made a contribution of \$1,000 to the Goodhue RPM and that on or about September 1, 2017, the Goodhue RPM made a contribution of \$1,000 to the Goggin committee. He further related that the Goggin committee refunded \$625 to the Goodhue RPM because it believed it had exceeded the limit that it could accept from party units and that the Goodhue RPM subsequently refunded \$625 to the Osmek committee.

Based on the timing and flow of funds from the Osmek committee to the Goodhue RPM to the Goggin committee and then in the reverse direction, the executive director was concerned that earmarking or circumvention of the requirements of Chapter 10A may have occurred. As a result the executive director submitted the matter to the Board at its June 14, 2017, meeting for consideration of the initiation of an investigation. The Goodhue RPM and the Osmek Volunteer committee were notified of the submission as required by statute. Senator David Osmek responded in writing but the parties did not appear in person at the submission hearing.

At its June 14 meeting the Board ordered an investigation of the Goodhue RPM and the Osmek committee into possible violations of the Chapter 10A prohibitions on earmarking and circumvention.

The investigation

Notice of the investigation was provided to the parties, both of whom were represented by attorney Richard Morgan. The Board requested that the parties make witnesses available for sworn interviews and that the parties and the witnesses produce documents relating to the matters under investigation.

During the course of the investigation, the Board conducted sworn interviews with Merle Larson and Jeff Hommedahl, the Goodhue RPM chair and treasurer, respectively. The Board also conducted sworn interviews of Senator David Osmek, who serves as the treasurer of the Osmek committee and of Senator Michael Goggin, who had won the 2016 election in senate district 21.

Earmarking

Minnesota's prohibition on accepting earmarked contributions, Minnesota Statutes section 10A.16, provides:

An individual, political committee, political fund, principal campaign committee, or party unit may not solicit or accept a contribution from any source with the express or implied condition that the contribution or any part of it be directed to a particular candidate other than the initial recipient.

The language of the statute makes it clear that an earmarking violation is only applicable to the entity that solicits or accepts of an earmarked contribution. In the present matter, the Goodhue RPM's acceptance of the Osmek contribution would result in an earmarking violation if the party unit accepted the contribution with an express or implied condition that it be directed to the Goggin committee.

With respect to earmarking, the Board has held that the requirement that the contribution be "directed to" a particular candidate does not mean that the money must be donated by the original recipient on to the candidate to whom the contribution is "directed." A contribution is

“directed to” a particular candidate if the express or implied condition is that the contribution be used to benefit that specific candidate.¹

The condition that triggers the earmarking statute need not be a condition precedent to making the contribution. It is sufficient that the condition is expressed in the context of the contribution and provides direction as to its intended use. In other words, it is not necessary for the donor to say, in effect, “I will not give you this contribution unless you agree to this condition.” The requirement for the condition is met if the donor conveys to the recipient expressly or by implication the fact that the contribution is intended to benefit a particular candidate.

In the present matter the facts are not generally in dispute as they are established by the testimony of various witnesses or by documentary evidence.

The relevant timeline starts with a telephone call from David Osmek to Michael Goggin at 5:55 PM on August 25, 2016. According to Osmek’s telephone bill, they spoke for 10 minutes. The next morning, August 26, Osmek and Goggin exchanged three text messages .

Goggin and Osmek both related that the August 25 telephone conference centered around the fact that Osmek wanted to help Goggin get elected. Osmek stated he knew that Michael Goggin was running against Matt Schmit, the incumbent senator representing district 21. Describing the conversation with Goggin, Osmek stated, “I spoke with him in late August, asking him for a BPOU that could use some help in defeating Matt Schmit, and he contacted me back with a BPOU treasurer location that I could send a check to . . .”²

About 14 minutes after Goggin finished his conversation with Osmek, Goggin called Merle Larson, chair of the Goodhue RPM and spoke with him for seven minutes. Goggin did not recall the specifics of this conversation, though he acknowledged that he could have told Larson about the pending contribution. When asked if Goggin had talked to him about the contribution before it was received, Larson said that he had not.³

That same day, Osmek wrote a check on the Osmek committee’s account for \$1,000 payable to “Goodhue County BPOU”⁴ but he did not mail it. The next morning, August 26, he received text communications from Goggin that he recalls provided him with information as to whom and to

¹ See Advisory Opinion 370 (November 22, 2005), in which the Board concluded that a contribution could be directed to a particular candidate if there was a condition that it be used for multi-candidate expenditures that would benefit that particular candidate. See also Advisory Opinion 356 (April 28, 2004). In Findings in the Matter of the Complaint against the Margaret (Kelliher) for Governor Committee and the Minnesota DFL State Central Committee (January 12, 2010), the Board concluded that earmarking occurred when donors gave money to the DFL party for the specific purpose of paying for the Kelliher committee’s access to the DFL voter database system.

² Osmek thought Goggin provided him with a treasurer to whom he could send the contribution. Actually, Goggin provided the party unit chair’s name and address.

³ Larson was interviewed prior to the Board’s receipt of telephone records, so he was not asked specifically about the call that was disclosed in the records.

⁴ A BPOU is a Republican Party basic political organizational unit, which a local unit of the party.

what address he should send the check. Following the receipt of this information, Osmek mailed the check to Merle Larson.

Larson received the check on Tuesday, August 30, and gave it to a deputy treasurer to deposit. When he received the check, Larson sent an email to the party unit treasurer informing him that the check came with the “expressed request that this donation should be sent on to the Mike Goggin for Senate Committee. The memo says ‘BEAT MATT SCHMIT!’” He instructed the treasurer to issue a Goodhue RPM check to the Goggin committee for \$1,000, which the treasurer did on September 1, 2016.

In his statement to the Board, Larson says he drew his conclusion about the express request that the money be donated to Goggin solely from the memo on the check. However, the text of the memo line on the check does not make such an express request.

The only conclusion supported by the entire body of evidence is that in the telephone call from Goggin to Larson, which closely followed Goggin’s conversation with Osmek, Goggin relayed his understanding of Osmek’s intentions to Larson. On the basis of that conversation and the memo on the check, Larson understood that the Osmek contribution was to be used to defeat Matt Schmit, thereby helping Goggin get elected. However, Larson also drew the further conclusion that the proceeds of the Osmek contribution were to be contributed directly to the Goggin committee.

Neither Osmek’s testimony nor the memo on the check support Larson’s ultimate conclusion that the money was to be transferred directly to the Goggin committee. However, such a specific condition is not required to establish an earmarking violation. The Goodhue RPM’s understanding of Osmek’s intention that the contribution was to be used to help get Goggin elected is sufficient.

Throughout the entire relevant time period, members of the Goodhue RPM knew about Larson’s understanding that the Osmek contribution was given with the condition that it be used for the benefit of the Goggin committee. In his September 2016 treasurer’s report, treasurer Hommedahl stated, “We received a donation of \$1,000 from the Osmek Volunteer committee that was designated to go to the Goggin for Senate Campaign.”

When the Goggin committee returned \$625 of the contribution, Hommedahl’s treasurer’s report stated, “We received a refund of \$625 from the Goggin Campaign as they met the maximum amount that they could receive from us, I suggest that we give it back to the Osmek for Senate campaign as they gave us a check for \$1,000 to give to the Goggin campaign.”

In his sworn interview Hommedahl explained that his characterization of the conditions attached to the Osmek contribution arose solely from the original email Merle Larson sent him when the contribution came in saying that the contribution came “with the expressed request that this donation should be sent on to the Mike Goggin for Senate campaign.”

The record establishes by a preponderance of the evidence that the Goodhue RPM accepted the Osmek committee's contribution with the condition that it was to be used to defeat Goggin's opponent, and, thus, to help get Goggin elected. By accepting the contribution with this condition, the Goodhue RPM violated the section 10A.16 prohibition on accepting earmarked contributions.

Circumvention

Minnesota's circumvention statute, section 10A.29, provides as follows

An individual or association that attempts to circumvent this chapter by redirecting a contribution through, or making a contribution on behalf of, another individual or association is guilty of a gross misdemeanor and subject to a civil penalty imposed by the board of up to \$3,000.

When an earmarked contribution is accepted by the initial recipient and then re-donated to a candidate, the possibility of circumvention arises. If the condition with which the contribution was made by the initial donor was not merely that it be used to influence the nomination or election of the candidate, but that it be donated on to the candidate, a circumvention violation arises.

In this matter it is clear that Senator Osmek wanted his contribution to the Goodhue RPM to be used to defeat Matt Schmit. That resulted in the Goodhue County RPM accepting an earmarked contribution. However, Osmek's testimony was clear that he did not intend or expect to exert any control over *the means by which* the party unit used the money to influence the Goggin-Schmit election.

Merle Larson somehow came to the conclusion that the proceeds of the Osmek contribution were to be directly donated to the Goggin committee. If that had been an understanding reached between Larson and Osmek, a circumvention violation would have resulted. However, the evidence does not support a finding that Larson's conclusion is attributable to Osmek. There was no direct communication between Osmek and Larson. Additionally, Larson testified that he arrived at his conclusion solely based on the memo on the check, which the Board finds insufficient by itself to constitute an instruction from Osmek to redirect the contribution to the Goggin committee. Osmek's clear testimony was that he intended the money to be used in any of the various ways that party units help their candidates.

Considering all of the evidence, the Board concludes that it is insufficient to support a finding that the Osmek committee and the Goodhue RPM acted in violation of the section 10A.29 prohibition on circumvention.

As it concludes this matter, the Board notes that during the discussion of candidates and their local party units, the point has been made that party units are known to support their local candidates. That is a primary reason for their existence. There is nothing improper about

making contributions with the expectation or even the intent that the money will benefit the local party unit's candidates.

However, when that expectation or intent is conveyed with the contribution a donor runs the risk of turning a general contribution into an earmarked contribution.

Based on the body of evidence before it, the Board makes the following:

Findings of fact

1. On August 25, 2016, Senator David Osmek, treasurer of the Osmek Volunteer Committee, had a telephone conversation with senate district 21 candidate Michael Goggin in which Osmek informed Goggin that Osmek wanted to make a contribution to a local party unit to be used for the purpose of helping defeat Goggin's opponent.
2. During the conversation, Osmek asked Goggin to identify a party unit to receive the contribution and to provide information as to whom and where to send the check.
3. Shortly after his conversation with Osmek, Goggin talked to Merle Larson, chair of the Goodhue County Republican Party of Minnesota, about the contribution.
4. On August 26, 2016, Goggin informed Osmek that Osmek should mail the proposed contribution to Larson. That same day Osmek mailed an Osmek committee check for \$1,000 to the Goodhue RPM by sending it to Larson at his home address.
5. Larson received the contribution on August 30, 2016, and the same day delivered it to a deputy treasurer for deposit into the party unit's depository.
6. Just after receiving the contribution, Larson sent an email to the Goodhue RPM treasurer informing him of the contribution and telling him that even though the contribution was payable to the party unit, it came "with the expressed request that this donation be sent on to the Mike Goggin for Senate Committee." Larson directed the treasurer to issue the contribution to the Goggin committee.
7. The deputy treasurer deposited the Osmek Committee check on August 30 and the treasurer issued the check to the Goggin committee in the same amount on September 1, 2016.
8. Subsequently on two occasions the treasurer reported to the full Goodhue RPM about the contribution both times indicating that it had been given to the party unit by the Osmek committee "to be given to" or "to go to" the Goggin committee.

Based on the above findings of fact, the Board makes the following:

Conclusions of law

1. The Goodhue RPM, acting through its chair and treasurer accepted a contribution with the express condition that it was to be directed to a particular candidate. As a result, the Goodhue RPM violated Minnesota Statutes section 10A.16, which prohibits the acceptance of earmarked contributions.
2. The evidence is insufficient to support a conclusion that the actions surrounding the subject contribution violated Minnesota Statutes section 10A.29, which prohibits circumvention.

Based on the above findings of fact and conclusions of law, the Board issues the following:

Order

1. The Goodhue RPM must return \$375 to the Osmek committee, which represents the amount of the earmarked contribution not previously returned.
2. The Goodhue RPM must pay a civil penalty of \$1,000 for its violation of the Chapter 10A prohibition on the acceptance of earmarked contributions.
3. The refund required in paragraph 1 and the civil penalty required in paragraph 2 must be made not later than 60 days from the date of this agreement. Payment of the civil penalty must be made by sending to the Board a check made payable to the State of Minnesota. The refund must be confirmed by sending a copy of the front and back of the cancelled check along with a copy of the letter making the refund to the Board not later than 30 days after the refund is made.
4. 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.

/s/ Carolyn Flynn
Carolyn Flynn, Vice Chair
Campaign Finance and Public Disclosure Board

Date: November 1, 2017