

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

**PROBABLE CAUSE
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF SENATOR PAUL GAZELKA REGARDING THE ERIN MURPHY FOR SENATE COMMITTEE

Background

On September 22, 2020, the Campaign Finance and Public Disclosure Board received a complaint submitted by Senator Paul Gazelka, in his role as chair of the Senate Victory Fund, regarding the Erin Murphy for Senate committee. Erin Murphy for Senate is the principal campaign committee of Erin Murphy, a candidate for Minnesota Senate District 64.

The complaint alleges violations of Minnesota Statutes section 10A.27, subdivision 9, which prohibits a principal campaign committee from making a contribution to another candidate's principal campaign committee, and Minnesota Statutes section 10A.25, subdivision 3a, which prohibits candidates who have signed the public subsidy agreement from making independent expenditures. Ms. Murphy signed the public subsidy agreement on October 2, 2019. The complaint alleges that the Murphy committee is seeking to hire and pay campaign staff who will work at the direction of the Murphy committee on behalf of other Minnesota state-level candidates. The complaint included copies of job postings for paid campaign workers. The postings state:

Through the 2020 General Election, Erin Murphy for State Senate will be working to keep Minnesota blue in statewide races, and to help create a State Senate majority that can take action on the urgent issues facing our state. To do so, the campaign is building a strong relational organizing program that will work to increase turnout across CD 4, recruit SD 64 volunteers to call Minnesotans across the state, and mobilize Erin's past base to support candidates in contested Senate races.

The complaint alleges that when the Murphy committee hires individuals for these positions the committee will be making expenditures to support candidates in contested Senate races in Minnesota. The complaint alleges that those expenditures would violate the cited provisions of Chapter 10A.

On September 25, 2020, the Board chair determined that the allegations in the complaint stated a prima facie violation of Minnesota Statutes sections 10A.27, subdivision 9, and 10A.25, subdivision 3a. The complainant and legal counsel for the Murphy committee were provided the prima facie determination on September 25, 2020.

On September 28, 2020, the Murphy committee responded to the complaint. The response states that the Murphy committee has not made any contributions to other candidates nor made any independent expenditures supporting other candidates.

The Murphy committee explains that when Ms. Murphy learned that she would not have a primary opponent in the 2020 primary election, she wanted to shift her attention to promoting voter turnout. Therefore, the Murphy committee's three paid staff, Dan Cox, Tom Basgen, and Mara Novillo, all left the employment of the Murphy committee and, effective July 17, 2020, began working for the MN DFL State Central Committee. The MN DFL State Central Committee's July 27, 2020, and September 22, 2020, reports of receipts and expenditures show payroll expenses to Dan Cox, Tom Basgen, and Mara Novillo starting July 17, 2020.

The Murphy committee states that while Erin Murphy announced the job openings and published them on her committee's letterhead, the positions will be employed, paid, and supervised exclusively by the MN DFL State Central Committee. In a sworn statement, Erin Murphy provides, "My campaign committee has not made any contributions to any other candidate's principal campaign committee nor has my campaign committee made any independent expenditures to support any other candidates."

At its meeting on October 7, 2020, the Board considered this matter and attorneys for both the Murphy committee and the Senate Victory Fund appeared before the Board.

Analysis

When the Board chair makes a finding that a complaint raises a prima facie violation, the full Board then must determine whether probable cause exists to believe an alleged violation that warrants an investigation has occurred. Minn. Stat. § 10A.022, subd. 3 (d).

Minnesota Statutes section 10A.27, subdivision 9, paragraph (a), states a "candidate's principal campaign committee must not make a contribution to another candidate's principal campaign committee, except when the contributing committee is being dissolved." The complaint alleges that the Murphy committee has made or intended to make expenditures to hire campaign staff who will work on behalf of other Minnesota state-level candidates. Under Chapter 10A, expenditures made on behalf of a candidate "with the authorization or expressed or implied consent of, or in cooperation or in concert with, or at the request or suggestion of the candidate, the candidate's principal campaign committee, or the candidate's agent" are approved expenditures. Minn. Stat. § 10A.01, subd. 4. An approved expenditure is a contribution to the candidate on whose behalf the expenditure is made.

Here, the Murphy committee advertised for two job positions on its campaign letterhead. The Erin Murphy Twitter account tweeted about the positions stating in part that "our campaign is expanding to take on the challenges of the last weeks of this election – we are looking for one full time organizer and a crew of part-time fellows." Both job postings asked potential applicants to email their resumés and letters of interest to an email address of the Murphy committee. It is

understandable why the complainant concluded that the Murphy committee either was making, or was about to make, a contribution to another candidate's principal campaign committee, specifically candidates in closely contested Senate races. However, the response from the Murphy committee shows that the positions will be employed, paid, and supervised exclusively by the MN DFL State Central Committee.

The MN DFL State Central Committee may make approved expenditures, independent expenditures, and multicandidate political party expenditures on behalf of candidates. Multicandidate political party expenditures are defined in Minnesota Statutes section 10A.275 as expenditures made "by a party unit, or two or more party units acting together" and include specific services or expenditures such as promoting the party without specifically mentioning a candidate, an official party sample ballot with three or more names of individuals who will appear on the ballot, a phone bank for three or more individuals who will appear on the ballot, a political party fundraising effort for three or more candidates, and party committee staff services that benefit three or more candidates. The statute provides that political party units may act together to make multicandidate expenditures, but it does not provide a role for candidate committees in the decision to make those expenditures. If a principal campaign committee's level of work on the multicandidate expenditures amounts to joint decision making with the political party unit, then the expenditure falls outside the definition of a multicandidate party expenditure. Further, if a principal campaign committee places conditions on the principal campaign committee's contribution, the committee and the political party run the risk of earmarking in violation of Minnesota Statutes section 10A.16.¹

Here, the Murphy committee has stated that the posted positions will be employed, paid, and supervised only by the MN DFL State Central Committee. Therefore, the involvement of the Murphy committee in advertising and accepting applications for the positions will be the extent of the committee's involvement with any multicandidate political party expenditures that are later made.

Minnesota Statutes section 10A.25, subdivision 3a, states that a candidate who signed the public subsidy agreement "must not make independent expenditures." The complaint alleges that the Murphy committee has made or is making expenditures to hire campaign staff who will work "to mobilize potential voters to support candidates in contested Senate races." Under Minnesota Statutes section 10A.01, subdivision 18, expenditures expressly advocating the election or defeat of a clearly identified candidate that are "made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, any candidate or any candidate's principal campaign committee or agent" are independent expenditures. Here, the Murphy committee states that it has not made, nor will it make, any independent expenditures on behalf of other candidates.

Based on the complaint, the response from the Murphy committee, and the declarations from Erin Murphy and Dan Cox, there is not probable cause to believe that the Murphy committee

¹ See [Advisory Opinion 370 \(Nov. 22, 2005\)](#).

made expenditures that violated either the prohibition on making a contribution to another candidate's principal campaign committee or the prohibition on making independent expenditures.

Order:

1. The allegation that the Erin Murphy for Senate committee violated the prohibition on making a contribution to another candidate's principal campaign committee in Minnesota Statutes section 10A.27, subdivision 9, is dismissed without prejudice because there is not probable cause to believe that this violation occurred.
2. The allegation that the Erin Murphy for Senate committee violated the prohibition on making independent expenditures in Minnesota Statutes section 10A.25, subdivision 3a, is dismissed without prejudice because there is not probable cause to believe that this violation occurred.

/s/ Stephen Swanson
Stephen Swanson, Vice Chair
Campaign Finance and Public Disclosure Board

Date: 10/9/2020