

**State of Minnesota
Campaign Finance and Public Disclosure Board**

**In the matter of the Complaint Regarding the
Peter Hutchinson for Minnesota Committee**

Statement of the Allegations and Responses

On February 12, 2007, Brian Melendez, Chair of the Minnesota Democratic Farmer Labor Party, ("Complainant") filed a complaint with the Campaign Finance and Public Disclosure Board ("the Board") regarding the Peter Hutchinson for Minnesota Committee ("Hutchinson Committee").

The Complainant states that the Hutchinson Committee violated the provisions of Minnesota Statutes Chapter 10A by directly or indirectly controlling the expenditures and activities of the Joel Spoonheim for Secretary of State Committee, John James for Attorney General Committee, and Lucy Gerold for State Auditor Committee. The Complainant states, "A candidate may not authorize, designate, or cause to be formed any other political committee "operating under the direct or indirect control of the candidate". In support of this allegation the Complainant attached a copy of the Miscellaneous Income Schedule A2 from the year end Report of Receipts and Expenditures of the Hutchinson Committee. The schedule shows numerous reimbursements from the Spoonheim, James, and Gerold Committees for various campaign expenditures. The Complainant also provided a *Minneapolis Star Tribune* article from August 29, 2006, which refers to "Team Minnesota, a slate of five IP candidates for statewide office", and an article from October 4, 2006, that discusses a television advertisement for the Hutchinson Committee that features former Governor Ventura.

The Complainant states further that, "Based on the above facts, however, it is clear that the Hutchinson for Minnesota Committee substantially commingled its funds with those the other candidates running on the Independence Party ticket. In other words, it in effect operated as a political party". A principal campaign committee is required to maintain a separate bank depository for its contributions under Minnesota Statutes, section 10A.15, subdivision 3.

The Complaint also cites Minnesota Statutes, section 10A.27, subdivision 9, which prohibits a candidate's principal campaign committee from accepting a donation from another principal campaign committee unless the donor committee is terminating. No specific evidence that the Hutchinson Committee accepted contributions from the Spoonheim, James, or Gerold Committees was provided.

Board staff forwarded a copy of the complaint to Peter Hutchinson, candidate, and Pam Neary, chair of the Hutchinson Committee on February 12, 2007. On February 23, 2007, Board staff sent a follow-up letter that asked specific questions based on the complaint and requested documentation on campaign expenditures reimbursed to the Hutchinson Committee by the Spoonheim, James, and Gerold campaigns.

On February 27, 2007, the Board received a response and the requested documentation from Pam Neary on behalf of the Hutchinson Committee. In response to a Board question on the allegation that the Hutchinson Committee directly or indirectly controlled the Spoonheim, James, or Gerold Committees Ms. Neary states, "Any expenditure for which the Hutchinson campaign requested reimbursements were jointly determined by all candidates involved in that particular expenditure." Ms. Neary further provided the information that all candidates authorized joint expenditures prior to the placement of an order with a vendor.

In response to a Board question on the method used to determine the allocation of cost for joint campaign expenditures between the candidates' committees Ms. Neary stated, "If the products were jointly used products, the costs were allocated by splitting them evenly between each candidate. The Hutchinson campaign paid for 2/5ths of the cost (because of 2 candidates), while each of the other candidates paid for 1/5th. ...However, differentials in staff time, equipment or production costs were directly allocated to the specific candidate. All allocations were done on a time and cost basis. ...each campaign reimbursed the Hutchinson campaign for all staff time, staff equipment, campaign promotion products and vendor services."

In response to a Board question as to why it was the responsibility of the Hutchinson Committee to place orders with vendors Ms. Neary stated that, "In the limited number of cases in which orders were placed for all of the candidates, it was done by the Hutchinson Committee. The reason for this is that our campaign had existing relationships with the vendors that were used and it simplified processes and reduced the lead-time involved. It was not the *responsibility* of the Hutchinson Committee; it was the most convenient method".

In regards to the allegation that the Hutchinson Committee may have received donations from the Spoonheim, James, and Gerold Committees Ms. Neary states, "In no case did the Hutchinson Committee receive any excess reimbursements".

In response to the allegation that the Committee commingled funds Ms. Neary provided that the Spoonheim, James, Gerold and Hutchinson Committees did not share any depository for receiving contributions or making campaign expenditures.

The Board in executive session considered the matter on February 13, 2007 and March 13, 2007. The Board's decision is based on the complaint, the responses and documentation provided by the Hutchinson Committee, and Board records.

Board Analysis

For the allegation that the Hutchinson Committee directly or indirectly controlled the activities of the Spoonheim, James, or Gerold Committees to be substantiated there would need to be evidence of the Hutchinson Committee coercing, or at least coordinating, the other committee's expenditures to disproportionately benefit the Hutchinson campaign. Based on the statement by Ms. Neary that all of the candidates agreed to the joint expenditures prior to the placement of an order, the Board finds no evidence of coercion or control.

The Board also examined whether the joint campaign expenditures provided a disproportionate benefit to the Hutchinson Committee. The Board's investigation was limited to the invoices and spreadsheets provided by the Hutchinson Committee and was not extended to an examination of the campaign material purchased with the joint expenditures. The invoices and spreadsheets document that most reimbursements were based on staff time or vendor costs for goods and services that benefited a specific candidate. Basing a reimbursement on the specific hours or items received by a candidate is appropriate to insure that joint campaign expenditures do not result in a disproportionate benefit for either the candidate making or receiving the reimbursement. The Board found no reason to believe that reimbursements based on specific time and material costs provided a disproportionate benefit to the Hutchinson campaign.

However, some reimbursement invoices were based on dividing the costs of an item or service by the number of candidates that agreed to the joint expenditure. Allocating costs by the number of candidates affected is only appropriate if the allocation of physical space or use of the item was in fact the same for each candidate. Some items in the invoices were apparently not based on actual

space or times used but were instead divided by fifths with the Hutchinson Committee being billed two fifths of the cost based on the Hutchinson Committee having two candidates (Peter Hutchinson and Maureen Reed). This allocation is incorrect under the provisions of Minnesota Statutes, section 10A.25, subdivision 3, which provides in part that "...a candidate for governor and a candidate for lieutenant governor, running together, are considered a single candidate. ...all expenditures made by or all approved expenditures made on behalf of the candidate for lieutenant governor are considered to be expenditures by or approved expenditures on behalf of the candidate for governor".

By treating the lieutenant governor candidate as a separate share of the cost of some reimbursements (a phone bank, office equipment, and computer design equipment) the Hutchinson Committee paid an excessive share of the cost of these items. A recalculation of the cost of these three items will be necessary to avoid an in-kind donation from the Hutchinson Committee to the other committee's that shared in the joint expenditure. The Board notes that the reallocation of these expenditures will not cause the Spoonheim, James, or Gerold Committees to exceed their campaign expenditure limits.

The Board's investigation of the joint expenditures has also disclosed that the Hutchinson Committee overstated the Committee's expenditures on the 2006 year-end Report of Receipts and Expenditures. The Hutchinson Committee reported the full amount of joint expenditures (for which the Committee was reimbursed) as a Hutchinson campaign expenditure. Reporting the joint expenditures in this manner overstates the campaign expenditures of the Hutchinson Committee. Minnesota Statutes, section 10A.20, subdivision 3 (g) (h), requires a principal campaign committee to report expenditures made on behalf of the committee. The expenditures that were reimbursed by the Spoonheim, James, or Gerold Committees should have been reported on Schedule B3 – Other Disbursements.

Based on the statement of Ms. Neary, and the lack of evidence provided with the complaint, the Board found no reason to believe that the Hutchinson Committee commingled its funds with the funds of the Spoonheim, James, or Gerold Committees.

Based on the above analysis, the Board makes the following:

FINDINGS CONCERNING PROBABLE CAUSE

1. There is no probable cause to believe that the Hutchinson Committee directly or indirectly controlled the Joel Spoonheim for Secretary of State Committee, John James for Attorney General Committee, or Lucy Gerold for State Auditor Committee. The Board finds that no violation of Minnesota Statutes, section 10A.105, subdivision 1, occurred.
2. There is no probable cause to believe that the Hutchinson Committee commingled its funds with the funds of the Joel Spoonheim for Secretary of State Committee, John James for Attorney General Committee, or Lucy Gerold for State Auditor Committee. The Board finds that no violation of Minnesota Statutes, section 10A.15, subdivision 3, occurred.
3. There is no probable cause to believe that the Hutchinson Committee accepted reimbursements from the Joel Spoonheim for Secretary of State Committee, John James for Attorney General Committee, or Lucy Gerold for State Auditor Committee that were in excess of the amount owed to the Hutchinson Committee. The Board finds that no violation of Minnesota Statutes, section 10A.27, subdivision 9, occurred.
4. There is probable cause to believe that the Hutchinson Committee incorrectly allocated a share of the cost of certain joint expenditures to the candidate for Lieutenant Governor. The

Board finds that the allocation of costs for certain joint expenditures do not comply with the provisions of Minnesota Statutes, section 10A.25, subdivision 3.

5. There is probable cause to believe that the Hutchinson Committee overstated the Committee's campaign expenditures when it reported the full amount of joint campaign expenditures as an expenditure by the Hutchinson Committee. The Board finds that the reporting of campaign expenditures by the Hutchinson Committee does not comply with the requirements of Minnesota Statutes, section 10A.20, subdivision 3 (g) (h).
6. There is no probable cause to believe that the allocation or reporting violations were intentional or done to circumvent contribution or expenditure limits.

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

ORDER

1. Within thirty days of receiving this order the Hutchinson Committee must provide the Joel Spoonheim for Secretary of State Committee, John James for Attorney General Committee, and Lucy Gerold for State Auditor Committee revised invoices for reimbursements for goods or services that were not based on actual space allocated or time used and that allocated one fifth of the cost to the Lieutenant Governor. The revised invoices must provide that the Hutchinson Committee is responsible for one fourth of the cost of goods or services that meet these criteria.
2. Within thirty days of receiving this order the Hutchinson Committee must amend the Committee's year end Report of Receipts and Expenditures to show only those expenditures that benefited the Hutchinson Committee as campaign expenditures. Expenditures made that were later reimbursed must be reported on Schedule B3.
3. If the Hutchinson Committee does not comply with the provisions of this order, the Board's Executive Director shall refer this matter to the Ramsey County Attorney for civil enforcement pursuant to Minnesota Statutes, section 10A.273.
4. The Board's investigation of this matter is concluded and the records of the investigation are hereby made a part of the public records of the Board pursuant to Minnesota Statutes, Section 10A.02, subdivision 11.

Board staff shall provide copies of these Findings to Peter Hutchinson, Pam Neary, and Brian Melendez.

Dated: March 13, 2007



Felicia Boyd, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes

10A.15 CONTRIBUTIONS.

Subd. 3. **Deposit.** All contributions received by or on behalf of a candidate, principal campaign committee, political committee, political fund, or party unit must be deposited in an account designated "Campaign Fund of (name of candidate, committee, fund, or party unit)." All contributions must be deposited promptly upon receipt and, except for contributions received during the last three days of a reporting period as described in section 10A.20, must be deposited during the reporting period in which they were received. A contribution received during the last three days of a reporting period must be deposited within 72 hours after receipt and must be reported as received during the reporting period whether or not deposited within that period. A candidate, principal campaign committee, political committee, political fund, or party unit may refuse to accept a contribution. A deposited contribution may be returned to the contributor within 60 days after deposit. A contribution deposited and not returned within 60 days after that deposit must be reported as accepted.

10A.20 CAMPAIGN REPORTS.

Subd. 3. **Contents of report.**

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(g) The report must disclose the name and address of each individual or association to whom aggregate expenditures, including approved expenditures, have been made by or on behalf of the reporting entity within the year in excess of \$100, together with the amount, date, and purpose of each expenditure and

- the name and address of, and office sought by, each candidate on whose behalf the expenditure was made,
- identification of the ballot question that the expenditure was intended to promote or defeat, and
- in the case of independent expenditures made in opposition to a candidate, the candidate's name, address, and office sought.

A reporting entity making an expenditure on behalf of more than one candidate for state or legislative office must allocate the expenditure among the candidates on a reasonable cost basis and report the allocation for each candidate.

(h) The report must disclose the sum of all expenditures made by or on behalf of the reporting entity during the reporting period.

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10A.25 SPENDING LIMITS.

Subd. 3. **Governor and lieutenant governor a single candidate.** For the purposes of sections 10A.11 to 10A.34, a candidate for governor and a candidate for lieutenant governor, running together, are considered a single candidate. Except as provided in subdivision 2, paragraph (b), all expenditures made by or all approved expenditures made on behalf of the candidate for lieutenant governor are considered to be expenditures by or approved expenditures on behalf of the candidate for governor.

10A.27 CONTRIBUTION LIMITS.

Subd. 9. **Contributions to and from other candidates.** (a) A candidate or the treasurer of a candidate's principal campaign committee must not accept a contribution from another candidate's principal campaign committee or from any other committee bearing the contributing candidate's name or title or otherwise authorized by the contributing candidate, unless the contributing candidate's principal campaign committee is being dissolved.

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