

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

.....
August 7, 2012

**Room 220
Minnesota Judicial Center**

.....

MINUTES

The meeting was called to order by Chair McCullough.

Members present: Beck, Luger, McCullough, Peterson, Scanlon, Wiener

Others present: Goldsmith, Sigurdson, Larson, Pope, staff; Hartshorn, counsel

MINUTES (July 13, 2012)

Member Scanlon's motion: To approve the July 13, 2012, minutes as drafted.

Vote on motion: Unanimously passed (Wiener absent).

CHAIR'S REPORT

Board meeting schedule

The next Board meeting is scheduled for Friday, September 7, 2012.

EXECUTIVE DIRECTOR'S TOPICS

Executive Director Goldsmith reported on recent Board office operations.

The 15-day pre-primary report of receipts and expenditures was due on July 30, 2012. Mr. Goldsmith noted that this was the first report due for candidate committees and political party units this year and the first time that many of these committees had filed electronically. Mr. Goldsmith reported that staff believed the week of July 30th was one of the busiest in the history of the Board.

Budget preparation

Mr. Goldsmith presented the Board with a memorandum which is made a part of these minutes by reference.

Mr. Goldsmith explained that the budget process was just beginning and that the Board would act later to make formal budget recommendations. Mr. Goldsmith asked the Board for general goals to guide staff in budget preparation. After discussion, the sense of the Board was to pursue adoption of a registration fee structure that would provide sufficient funding for 9 – 10 FTE employees. The fees should be deposited

into a special fund dedicated to the Board. The Board also supported funding the redesign of the Board's website.

ENFORCEMENT REPORT

The Board considered the monthly enforcement report presented by Assistant Executive Director Sigurdson. The Board took the following actions related to matters on the Enforcement Report:

Discussion Items

Waiver requests:

Coalition for Democratic Values - \$50. Bill Hansen, treasurer, asked for a waiver of the late fee for the committee's 28-day pre-primary report because the committee has terminated.

After discussion the following motion was made,

Member Scanlon's motion: To waive the \$50 late fee for the Coalition of Democratic Values committee.

Vote on motion: Unanimously passed

AFSCME Local 1842 City of St. Paul Technicians - \$200. Lori Lemke asked for a waiver of the late fees for the committee's 56-day pre-primary report because illness prevented her from knowing that the report was due and from filing the report. Ms. Lemke also asked that the committee be allowed to terminate with a balance greater than \$100. The committee contributes to local candidates and therefore does not need to be registered with the Board.

After discussion the following motions were made,

Member Luger's motion: To waive the \$200 late fee for the AFSCME Local 1842 City of St. Paul Technicians committee.

Vote on motion: Unanimously passed

Member Beck's motion: To allow the AFSCME Local 1842 City of St. Paul Technicians committee to terminate with a balance greater than \$100.

Vote on motion: Unanimously passed

Patriot PAC and Voter ID for MN - \$50 each. Joey Gerdin, treasurer for both committees, was using the software to submit the 28-day preprimary reports. She received an error message when she was preparing to submit the report and her computer shut down. She came to the Board office the next day and filed paper reports for both committees.

After discussion the following motion was made,

Member Luger's motion: To waive the \$50 late fee for the Patriot PAC and the \$50 late fee for the Voter ID for MN committee.

Vote on motion: Unanimously passed

Lavern Pederson - \$80. Mr. Pederson is a candidate who needed to file an economic interest statement. Mr. Pederson was confused as to what needed to be filed.

After discussion the following motion was made,

Member Luger's motion: To waive the \$80 late fee for candidate Lavern Pederson.

Vote on motion: Unanimously passed

9th Judicial District - \$100. Paul Ritter, treasurer, is a software user and was confused about submitting the report 28-day pre-primary report. Staff helped him timely file the 56-day pre-primary report.

After discussion the following motion was made,

Member Peterson's motion: To waive the \$100 late fee for the 9th Judicial District committee.

Vote on motion: Unanimously passed

Hunting and Angling Club - \$50. Ray Stawski, treasurer, filed a no-change 56-day pre-primary report. The week the report was due he was busy with medical appointments.

After discussion the following motion was made,

Member Wiener's motion: To waive the \$50 late fee for the Hunting and Angling Club committee.

Vote on motion: Unanimously passed

Gay and Lesbian Victory Fund - \$200. Elizabeth Getman explained that the committee attempted to fax the 56-day pre-primary report on June 18th. When contacted by Board staff about the missing report, they reviewed the fax confirmation and found they had used the wrong area code for the fax number.

After discussion the following motion was made,

Member Beck's motion: To reduce the late fee from \$200 to \$50 for the Gay and Lesbian Victory Fund committee.

Vote on motion: Unanimously passed.

Informational Items

A. Payment of a late filing fee for the June 19, 2012 56-day pre-primary-election report:

BAM PAC, \$50
Bemidji Central Labor Body, \$100
Bike PAC, \$50
Constitution Party of MN, \$50
CWA Minn State Council, \$50
Emily's List, \$50
IFAPAC Minn, \$150
Insurance Federation Political Action Comm, \$50
Iron Range Building Trades PAF, \$50
Minn Farm Credit Services PAC, \$100
Minn Service Co-op PAC, \$50
Minn Solutions, \$50
Minneapolis Municipal Retirement Assn., \$200
Northwest Petroleum PAC, \$50
Plumbers and Pipefitters, \$50
School Lunch Bunch, \$50
Volunteer Firefighters Pol Fund, \$150
Vote 66, \$250
Vote No 2012, \$100
Vote November 6, \$50
We Are Minnesota, \$100
White Earth PAC, \$100

B. Payment of a late filing fee for July 17, 2012, 28-day pre-primary-election report:

St Paul Ward 4, \$50

C. Payment of a late filing fee for July 30, 2012, 15-day pre-primary-election report:

Rural Minn Preservation, \$50

D. Payment of a late filing fee for a Candidate Economic Interest Statement:

John Bacon, \$35

Connie Bernady, \$5
Ben Bloomberg, \$20
Jesse Colangelo, \$15
Kurt Daudt, \$15
Steve Gottwalt, \$30
David Hann, \$15
Mary Liz Holberg, \$5
Robert Humphrey, \$20
Kevin Klein, \$30
Warren Limmer, \$45
Tara Mack, \$50
Jason Metsa, \$55
Branden Petersen, \$35
Judy Rogosheske, \$30
Tom Saxhaug, \$15
Paul Scofield, \$40
Dave Thompson, \$10

E. Payment of a late filing fee for the 2011 Year-end Report of Receipts and Expenditures:

6th Congressional District IPMN, \$25
Jeff Hayden for 61B, \$150

F. Payment of a late filing fee for the June 15 Lobbyist Disbursement Report:

John Bothun, MN Driver and Traffic Safety, \$40
Daniel Schleck, Coalition for Sensible Siting, \$5

G. Payment of a civil penalty for exceeding special source aggregate limit:

Minnesotans for Benjamin Kruse, \$125. During 2011, the committee accepted \$3,050 in contributions from special sources. The total amount of these contributions exceeded by \$450 the applicable limit on aggregate contributions from special sources, which for a state senate candidate was \$2,600. Senator Kruse entered into a conciliation agreement on July 6, 2012.

H. Payment of a civil penalty for a contribution from an unregistered association:

Maschka, Riedy and Ries, \$180

ADVISORY OPINION REQUESTS

Advisory Opinion #427 – Application of Chapter 10A to an association that wishes to engage in online fundraising to influence the nomination or election of Minnesota state candidates

Mr. Goldsmith presented the Board with a memorandum which is attached to and made a part of these minutes.

The request that will result in Advisory Opinion 427 is non-public data and was received by the Board on May 18, 2012, from an association. The request was laid over at the June and July meetings.

The request covers two topics. The first relates to determining whether a contribution received from a donor violates the earmarking prohibition of Chapter 10A. The second asks for a review of the requester's summary of campaign finance law requirements.

The association plans to raise money from contributors using a website that allows the contributors to express their candidate preferences. The association expects to make donations to some of those candidates, but explains that the donor preferences will not dictate which candidates are actually supported by the association.

The opinion generally approves of the proposal as long as the donor preferences do not amount to a direction of donor contributions to specific candidates. As noted in the opinion, the facts in the real world will control and in the context of hypothetical facts an absolute opinion cannot be given.

The second part of the request lists campaign finance laws from Chapter 10A, Chapter 211B, and Chapter 211A. The requester explains how it believes these provisions apply. The draft opinion takes the position that an advisory opinion is not a means by which the Board will review and edit a compendium such as the one provided. The draft provides a list of other sources that are available to the requester for use in considering the application of Chapter 10A.

After discussion, the following motion was made:

Member Beck's motion: To adopt Advisory Opinion #427 as amended.

Vote on motion: Unanimously passed.

Advisory Opinion #428 – Are express words of advocacy required before a communication may be classified as an independent expenditure under Chapter 10A

Mr. Goldsmith presented the Board with a memorandum which is attached to and made a part of these minutes.

The request that will result in Advisory Opinion 428 is non-public data and was received by the Board on June 6, 2012. The request was laid over at the July meeting.

The request essentially asks the Board to confirm that its conclusion reached in the 2008 *Matter of the Complaint of Novack regarding Minnesota Majority* is still the Board's position. In that matter the Board concluded that independent expenditures in Minnesota require the use of specific words of express

advocacy. In 2008, the Board did not adopt the FEC position, which held that express advocacy included both speech that used the magic words of express advocacy as well as speech that was the functional equivalent of express advocacy. I am attaching a copy of the *Novack* findings for reference.

As it was in 2008, the FEC rule defining express advocacy is still under litigation, although now both a district court and a three-judge panel of a court of appeals have upheld the rule. Nevertheless, staff believes that it would be premature to announce a Minnesota interpretation based on those lower court opinions. Additionally, as explained in the draft advisory opinion, staff believes that the any significant change in the Board's approach to the definition of express advocacy should come in a rulemaking procedure.

The draft reviews the relevant statutes and cases and ultimately concludes that the Board will not modify the position announced in *Novack*.

After discussion, the following motion was made:

Member Luger's motion: To adopt Advisory Opinion #428 as amended.

Vote on motion: Unanimously passed.

Advisory Opinion #429 – Scope of expenditures that should be reported as lobbying disbursements or included in the calculation of the Annual Report of Lobbyist Principal

The request that will result in Advisory Opinion 429 is non-public data and was received by the Board on June 8, 2012. Staff asks that the Board lay the matter over until the next meeting.

After discussion, the following motion was made:

Member Luger's motion: To lay Advisory Opinion #429 over until the next Board meeting.

Vote on motion: Unanimously passed.

LEGAL COUNSEL'S REPORT

Board members reviewed a memo from Counsel Hartshorn outlining the status of cases that have been turned over to the Attorney General's office. The Legal Counsel's Report is made a part of these minutes by reference.

EXECUTIVE SESSION

The Chair recessed the regular session of the meeting and called to order the Executive Session. Upon completion of the Executive Session, the regular session of the meeting was called back to order and the following items were reported from the Executive Session:

Analysis, Conclusions of Law, and Order in the Matter of the Application of John Doe for an exemption from disclosure pursuant to Minnesota Statutes section 10A.20, subdivision 20

The Chair reported that in executive session, the Board issued an order in the above matter. See the Order which is attached to and made a part of these minutes.

Findings and Order in the Matter of the complaint of Bob Murray regarding House District 54A Republican Party of Minnesota and the Citizens for Mark Laliberte committee

The Chair reported that in its executive session, the Board made findings and issued an order in the above matter. See Findings and Order which are attached to and made a part of these minutes.

Findings and Order in the Matter of the complaint of Bob Murray regarding House District 54A Republican Party of Minnesota and the Citizens for Mark Fotsch committee

The Chair reported that in its executive session, the Board made findings and issued an order in the above matter. See Findings and Order which are attached to and made a part of these minutes.

Findings and Order in the Matter of a contribution to the John Schultz Volunteer Committee from the Sherman Group

The Chair reported that in its executive session, the Board made findings and issued an order in the above matter. See Findings and Order which are attached to and made a part of these minutes.

OTHER BUSINESS

Mr. Goldsmith reported that the Republican Party of Minnesota had proposed a payment plan for the penalties imposed by the Board in the Matter of the complaint of Common Cause Minnesota regarding the Republican Party of Minnesota.

After discussion, the following motion was made:

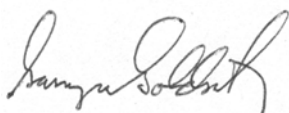
Member Beck's motion: To approve the payment plan proposed by the Republican Party of Minnesota.

Vote on motion: Unanimously passed.

James Carson, on behalf of candidate Duane Johnson, asked the Board to extend the time for Mr. Johnson to submit the paperwork necessary to qualify for public subsidy payments. The Board discussed Mr. Carson's request and determined that it had no authority under the law to grant any relief from the statutory deadlines.

There being no other business, the meeting was adjourned by the Chair.

Respectfully submitted,



Gary Goldsmith

Executive Director

Attachments:

August 2, 2012, memorandum regarding advisory opinion 427

August 3, 2012, memorandum regarding advisory opinion 429

Analysis, Conclusions of Law, and Order in the Matter of the Application of John Doe for an exemption from disclosure pursuant to Minnesota Statutes section 10A.20, subdivision 20

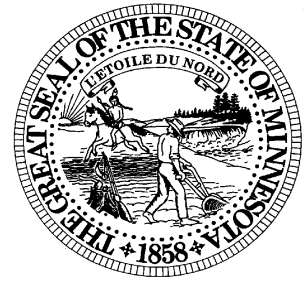
Findings and Order in the Matter of the complaint of Bob Murray regarding the House District 54A Republican Party of Minnesota and the Citizens for Mark Laliberte committee

Findings and Order in the Matter of the complaint of Bob Murray regarding the House District 54A Republican Party of Minnesota and the Citizens for Mark Fotsch committee

Findings and Order in the Matter of a contribution to the John Schultz Volunteer Committee from the Sherman Group

Minnesota

*Campaign Finance and
Public Disclosure Board*



Date: August 2, 2012

To: Board

From: Gary Goldsmith, Executive Director

Telephone: 651-539-1190

Re: Advisory Opinion 427

The attached advisory opinion request, which is nonpublic data, was received by the Board on May 12, 2012, and was laid over at previous meetings to allow time for staff to complete research and the preparation of a draft opinion. The draft opinion for Board consideration is attached as is a public version of the draft opinion.

The request covers two topics. The first relates to determining whether a contribution received from a donor violates the earmarking prohibition of Chapter 10A. The second asks for a review of the requester's summary of campaign finance law requirements.

The association plans to raise money from contributors using a website that allows the contributors to express their candidate preferences. The association expects to make donations to some of those candidates, but explains that the donor preferences will not dictate which candidates are actually supported by the association.

The opinion generally approves of the proposal as long as the donor preferences do not amount to a direction of donor contributions to specific candidates. As noted in the opinion, the facts in the real world will control and in the context of hypothetical facts an absolute opinion cannot be given.

The second part of the request lists campaign finance laws from Chapter 10A, Chapter 211B, and Chapter 211A. The requester explains how it believes these provisions apply. The draft opinion takes the position that an advisory opinion is not a means by which the Board will review and edit a compendium such as the one provided. The draft provides a list of other sources that are available to the requester for use in considering the application of Chapter 10A.

Please call me if you have questions or comments that you wish to address prior to the meeting.

Attachments:

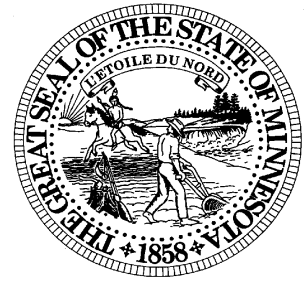
Draft nonpublic opinion

Draft public opinion

Advisory opinion request

Minnesota

*Campaign Finance and
Public Disclosure Board*



Date: August 3, 2012

To: Board

From: Gary Goldsmith, Executive Director

Telephone: 651-539-1190

Re: Advisory Opinion 428

The attached advisory opinion request, which is nonpublic data, was received by the Board on June 12, 2012, and was laid over at the July meeting to allow time for staff to complete research and the preparation of a draft opinion. The draft opinion for Board consideration is attached. Because the request and the draft opinion are both generic, the public version will be the same as the nonpublic version except that the requester's name and address will be removed.

The request essentially asks the Board to confirm that its conclusion reached in the 2008 *Matter of the Complaint of Novack regarding Minnesota Majority* is still the Board's position. In that matter the Board concluded that independent expenditures in Minnesota require the use of specific words of express advocacy. In 2008, the Board did not adopt the FEC position, which held that express advocacy included both speech that used the magic words of express advocacy as well as speech that was the functional equivalent of express advocacy. I am attaching a copy of the *Novack* findings for reference.

As it was in 2008, the FEC rule defining express advocacy is still under litigation, although now both a district court and a three-judge panel of a court of appeals have upheld the rule. Nevertheless, staff believes that it would be premature to announce a Minnesota interpretation based on those lower court opinions. Additionally, as explained in the draft advisory opinion, staff believes that the any significant change in the Board's approach to the definition of express advocacy should come in a rulemaking procedure.

The draft reviews the relevant statutes and cases and ultimately concludes that the Board will not modify the position announced in *Novack*.

Please call me if you have questions or comments that you wish to address prior to the meeting.

Attachments:

Draft nonpublic opinion
Advisory opinion request
Findings in *Novack*

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

Analysis, Conclusions of Law, and Order

**In the Matter of the Application of John Doe for an exemption from disclosure pursuant
to Minnesota Statutes section 10A.20, subdivision 8**

Procedural Background

On July 13, 2012, an applicant, asking to be identified by the name John Doe, submitted an application and affidavit requesting that the Board grant him an exemption from disclosure pursuant to Minnesota Statutes section 10A.20, subdivision 8. This exemption, if granted, would result in Mr. Doe's contributions to the named political committee being itemized in the name of John Doe rather than in the applicant's true name.

The application was submitted pursuant to the procedures set forth in Minnesota Statutes section 10A.20, subdivision 10. Mr. Doe requested that he be permitted to proceed anonymously and that his application be considered in a confidential proceeding. Mr. Doe supplemented his application with an additional affidavit on July 25, 2012.

The application related to a contribution of \$600 previously made by Mr. Doe to the Minnesotans United for all Families political committee. Mr. Doe indicates that at the time he made the contribution, he was not aware that his name and address would be made public on the recipient's disclosure statements filed with the Board. Board staff directed the recipient to temporarily report the contribution with its unitemized receipts while the Board implemented the provisions of Minnesota Statutes section 10A.20, subdivisions 8 and 10. In executive session, staff informed the Board of its direction for the temporary reporting of this receipt.

The Board met in a special executive session on July 27, 2012, where it considered and approved Mr. Doe's request for a confidential proceeding.

Mr. Doe's application was considered on the merits during the executive session of the Board's regular meeting on August 7, 2012.

Board Analysis

The Board granted Mr. Doe's request for an anonymous and confidential proceeding because it concluded that publication of Mr. Doe's application, even if under a pseudonym, would expose Mr. Doe to the loss of his employment. For the same reason, this Analysis and Order are issued in terms intended to protect Mr. Doe's confidentiality so that this document, itself, will not expose Mr. Doe to the loss of his employment.

For the purposes of this matter, a Catholic organization is defined to include the Archdiocese of St. Paul and Minneapolis, the other dioceses in Minnesota, Catholic parishes and Catholic schools in Minnesota, and other associations or organizations affiliated with one of these entities.

Mr. Doe's sworn affidavit and supplemental affidavit provide the evidence on which the Board makes its determination in this matter. Through these affidavits, Mr Doe relates the following information.

Mr. Doe is employed by a Catholic organization in a position where he may, from time to time, be required to represent the organization's policies to the public and to other organizations. Mr. Doe has strong opinions regarding the pending marriage amendment ballot question. Mr. Doe's opinions are in contrast to the official position of the Catholic Church in Minnesota, which is one of the main supporters of the amendment.

Mr. Doe's job does not require him to advocate for or against the marriage amendment. Nor does Mr. Doe argue that he is entitled to an exemption solely because he is employed by a Catholic organization. Instead, Mr. Doe argues that because his job requires him to represent the Catholic organization's policies to others from time to time, if his opposition to the marriage amendment was known, it would cause immense strain in his working relationships. Mr. Doe believes that this strain may be enough that his employment would be terminated.

As evidence of the likelihood of this harm, Mr. Doe includes in his affidavits information about an individual named Trish Cameron who was a teacher at a Catholic school in Moorhead, Minnesota. Mr. Doe spoke with Ms. Cameron to verify that her employment was terminated because of her position regarding gay marriage.

Ms. Cameron verified that the story of her firing, as reported by Minnesota Public Radio on its website on June 27, 2012, was accurate. According to Ms. Cameron, she expressed to her supervisors in the private context of an annual self-evaluation that she did not agree with all of the Church's teachings on a personal level, but that she did not bring her own opinions into the classroom. Her comment on the self-evaluation led to a meeting with the school principal and superintendent where she explained that her comment related to her disagreement with the Church's position on the subject of gay marriage.

A week later, Ms. Cameron was asked to resign. In her letter to parents, Ms. Cameron elaborates that she was told that she would not be offered a contract for the upcoming school year based on her response to the self-evaluation question and the further discussion in which she explained her disagreement with the Church's position on gay marriage.

Mr. Doe believes that Ms. Cameron's situation provides evidence in support of his position. Mr. Doe points out that Ms. Cameron acknowledged her opposition to the marriage amendment only in private, yet her employment was terminated as a result. On the other hand, Mr. Doe, who sometimes represents a Catholic organization regarding policy, made a \$600 contribution to an association diametrically opposed to the Catholic Church's position on the same issue. Mr. Doe believes that the Catholic Church's actions with respect to Ms. Cameron provide clear and convincing evidence that public disclosure of his opposition to the marriage amendment would expose him to the loss of his employment.

Minnesota Statutes section 10A.20, subdivision 8, requires an applicant to demonstrate by clear and convincing evidence that an exemption from itemized disclosure is needed to protect the applicant from exposure to the loss of employment or other specified harms. In this matter, the Board concludes that this requirement has been met.

Based on the application of John Doe and upon his affidavits, the Board makes the following:

Conclusions of Law

1. Mr. Doe established that if his application was not considered in an anonymous and confidential proceeding, the application itself would expose him to the loss of employment. On that basis, Mr. Doe's application was considered in an anonymous and confidential proceeding.

2. Mr. Doe has established by clear and convincing evidence that the itemized report of his contribution to Minnesotans United for All families would expose him to the loss of his employment.

Based on the application of Mr. John Doe, and the Board's Conclusions of Law, it is hereby ordered:

Order

1. Mr. John Doe is granted an exemption from the contribution itemization requirement of Minnesota Statutes section 10A.20 for contributions to Minnesotans United for all Families.

2. With respect to Mr. Doe's contribution, Minnesotans United for all Families is granted an exemption from the requirement that it itemize contributions with the true and correct name and address of each individual who contributes more that \$100 to the political committee. Minnesotans United for all Families must amend its previously filed report to itemize Mr. Doe's contribution using the contributor name "John Doe #1 pursuant to CFB order of August 7, 2012."

3. This exemption is available for any subsequent contributions Mr. Doe makes to Minnesotans United for all Families.

Dated: August 7, 2012

/s/ Greg McCullough

Greg McCullough, Chair
Minnesota Campaign Finance and Public Disclosure Board

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

**Findings and Order in the Matter of a Contribution to the John Schultz Volunteer
Committee from the Sherman Group**

Summary of the Facts

Pursuant to Minnesota Statutes section 10A.27, subdivision 13, candidates, political party units, and political committees registered with the Campaign Finance and Public Disclosure Board (the Board) may not accept a contribution in excess of \$100 from an association that is not registered with the Board unless the contribution is accompanied by financial disclosure of the donating association's receipts and expenditures in the form specified by statute. Acceptance of a contribution in excess of \$100 without the required disclosure is punishable by civil penalty of up to four times the amount of the contribution over \$100.

An unregistered association that makes a contribution of more than \$100 without the required disclosure is in violation of Minnesota Statutes section 10A.27, subdivision 13(b). Failure to provide the appropriate disclosure with a contribution of more than \$100 is punishable by civil penalty of up to \$1,000.

In a Report of Receipts and Expenditures filed for the 2012 special election in Senate District 20, the John Schultz Volunteer Committee (the Committee) disclosed receipt of a contribution received on March 14, 2012, in the amount of \$250 from the Sherman Group, an association not registered with the Board. No financial disclosure was provided with the contribution. The contribution was not returned within sixty days, and is therefore considered accepted under the provisions of Minnesota Statutes section 10A.15, subdivision 3.

In a June 29, 2012, response to a Board inquiry, Ken Sherman states that he was not in the habit of contributing to political candidates and sent the contribution on a company check not knowing it was prohibited. On July 25, 2012, the Committee returned \$250 to the Sherman Group and provided a copy of the check used to return the contribution to the Board.

This matter was considered by the Board in executive session on August 7, 2012. The Board's decision is based on the correspondence received from Ken Sherman and Board records.

Based on the information outlined in the above Summary of the Facts and Relevant Statutes, the Board makes the following:

Findings Concerning Probable Cause

1. There is probable cause to believe that the John Schultz Volunteer Committee violated Minnesota Statutes section 10A.27, subdivision 13, when it accepted a contribution in excess of \$100 from an unregistered association without receiving the appropriate disclosure with the contribution.
2. There is probable cause to believe that the Sherman Group violated Minnesota Statutes section 10A.27, subdivision 13 (b), when it made a contribution in excess of \$100 without providing the required disclosure.

3. There is no probable cause to believe that the violations by the John Schultz Volunteer Committee or the Sherman Group were intentional, or were done with the intent to circumvent the provisions of Chapter 10A.

Based on the above Findings Concerning Probable Cause, the Board issues the following:

ORDER

1. The Board imposes a civil penalty of \$150, one times the amount by which the contribution exceeded \$100, on the John Schultz Volunteer Committee for accepting and depositing a contribution from an unregistered association without the disclosure required by Minnesota Statutes section 10A.27, subdivision 13.
2. The John Schultz Volunteer Committee is directed to forward to the Board payment of the civil penalty by check or money order payable to the State of Minnesota within thirty days of receipt of this order.
3. The Board imposes a civil penalty of \$150 on the Sherman Group for making a contribution in excess of \$100 to the John Schultz Volunteer Committee without the disclosure required by Minnesota Statutes section 10A.27, subdivision 13 (b).
4. The Sherman Group is directed to forward to the Board payment of the civil penalty by check or money order payable to the State of Minnesota within thirty days of receipt of this order.
5. If the John Schultz Volunteer Committee or the Sherman Group does not comply with the provisions of this order, the Board's Executive Director may request that the Attorney General bring an action for the remedies available under Minnesota Statutes section 10A.34.
6. The Board investigation of this matter is hereby made a part of the public records of the Board pursuant to Minnesota Statutes section 10A.02, subdivision 11, and upon payment by the civil penalties imposed herein, this matter is concluded.

Dated: August 7, 2012

/s/ Greg McCullough
Greg McCullough, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes

10A.27, subdivision 13. Unregistered association limit; statement; penalty. (a) The treasurer of a political committee, political fund, principal campaign committee, or party unit must not accept a contribution of more than \$100 from an association not registered under this chapter unless the contribution is accompanied by a written statement that meets the disclosure and reporting period requirements imposed by section 10A.20. This statement must be certified as true and correct by an officer of the contributing association. The committee, fund, or party unit that accepts the contribution must include a copy of the statement with the report that discloses the contribution to the board. This subdivision does not apply when a national political party contributes money to its affiliate in this state.

(b) An unregistered association may provide the written statement required by this subdivision to no more than three committees, funds, or party units in a calendar year. Each statement must cover at least the 30 days immediately preceding and including the date on which the contribution was made. An unregistered association or an officer of it is subject to a civil penalty imposed by the board of up to \$1,000, if the association or its officer:

(1) fails to provide a written statement as required by this subdivision; or

(2) fails to register after giving the written statement required by this subdivision to more than three committees, funds, or party units in a calendar year.

(c) The treasurer of a political committee, political fund, principal campaign committee, or party unit who accepts a contribution in excess of \$100 from an unregistered association without the required written disclosure statement is subject to a civil penalty up to four times the amount in excess of \$100.

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

**Findings and Order in the Matter of the Complaint of Bob Murray
regarding House District 54A Republican Party of Minnesota and the Citizens for
Laliberte committee.**

The Allegations in the Complaint

On May 1, 2012, the Campaign Finance and Public Disclosure Board accepted a complaint from Bob Murray. To allow the investigation to be completed, the Board laid the matter over at its May, June, and July meetings.

This complaint alleges that an October 23, 2008, event reported as an expenditure on the House District 54A Republican Party of Minnesota 2008 year-end report actually was a contribution to the Citizens for Laliberte committee. A copy of an email promoting the event was attached to the complaint. The subject line stated "Free Buffet and RALLY for Mark" and the body of the email said that House District 54A RPM was having an event to support Mark Laliberte. In addition, the same person was the treasurer for both the party unit and the Citizens for Laliberte committee. These facts suggest that the event was coordinated with the candidate. When there is coordination of effort, the costs paid by the entity other than the candidate's committee are approved expenditures, which are a contribution to the candidate. If the costs of the 2008 event constitute a contribution to the Citizens for Laliberte committee, the aggregate contributions from the party unit to the candidate's committee would exceed the applicable contribution limit for 2008.

The Response to the Complaint

House District 54A RPM submitted a response to the complaint on June 4, 2012. The party unit submitted additional information in early July. Don Hewitt, the treasurer in 2010 for both the party unit and the Citizens for Laliberte committee, also gave a statement to the Board.

In its response, House District 54A RPM states that in 2008, Mark Laliberte was the RPM candidate for the house seat in District 54A. Lisa Belak was Mr. Laliberte's campaign manager. On March 31, 2008, House District 54A RPM gave the Citizens for Laliberte committee a \$5,000 contribution. This was the most that the party unit could give Mr. Laliberte's committee during 2010.

House District 54A RPM also states that on October 17, 2008, the chair of the party unit, Mike Boguszewski, sent an email to the other party unit officers stating that they would meet on October 23, 2008, to discuss matters related to the upcoming election. The email listed three specific topics, one of which was a final campaign push for Mark Laliberte. The email said that Mr. Laliberte would be at the meeting to sign up volunteers for the last two weeks of the

campaign. Mr. Boguszewski had coordinated Mr. Laliberte's appearance at the meeting with Ms. Belak. Mr. Laliberte was the only candidate specifically named in this email.

Mr. Boguszewski also stated that he was going to have the meeting in a new place with a new format. Mr. Boguszewski said he had reserved a room at a local restaurant where there would be a buffet dinner for the attendees. House District 54A RPM paid the restaurant \$1,008.39 for the event.

Before the event, Ms. Belak sent an email to Mr. Laliberte's supporters stating, "The House District 54A Republicans are having an event to support Mark Laliberte." Ms. Belak said that there would be a free buffet at the event and that attendees could sign up to help the Laliberte campaign with various campaign activities. In an email sent on October 23, 2008, to party unit supporters, Mr. Boguszewski called the event a "volunteer rally" and said that this was the party unit's last chance "to plan the final push for Mark Laliberte and our other candidates."

The agenda shows that on the night of the event, the formal presentation covered three items: a welcome and introductions; BPOU items; and a final election plan. The final election plan segment included a talk about poll watchers from a party representative. The next slides told the attendees about Mark Laliberte and asked them to help the Laliberte campaign with literature drops, get out the vote calls, and election day signs and posters. Mark Laliberte was the only Republican candidate specifically named on the literature to be dropped and in the script for the get out the vote calls.

Mr. Laliberte spoke at the event as did candidates for Congress and city council. A representative from the Norm Coleman campaign also spoke. Ms. Belak put Laliberte campaign literature and volunteer sign-up cards on all of the tables as did the other candidates. No fundraising was done at the gathering.

In its response, House District 54A RPM argues that party unit business was discussed at the October 23rd event and other candidates spoke to the attendees. The party unit therefore claims that the event was a party building activity, not a campaign event for Mr. Laliberte.

Board Analysis

The complaint alleges that the October 23, 2008, event was a contribution to Mark Laliberte in the form of an approved expenditure. Minnesota Statutes section 10A.01, subdivision 4, defines an approved expenditure as follows:

an expenditure made on behalf of a candidate by an entity other than the principal campaign committee of the candidate, if the expenditure is made 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.

Here the record supports a finding that at least half of the October 23rd event was for the benefit of Mark Laliberte. As House District 54A RPM argues, other candidates spoke at the event and other party unit business was discussed. But the materials suggest that at least half of the formal presentation that evening was devoted primarily to the Laliberte campaign. Mr. Laliberte was the only candidate named in the invitation emails, on the event's agenda, and in the slides for the presentation. Mr. Laliberte also was the only candidate for whom volunteers were expressly sought. Finally, Mr. Laliberte was the only candidate named in the discussed literature and the only candidate mentioned in the script for the get out the vote calls. Overall, although a portion of the evening was devoted to party unit business, the Board concludes that at least half of the event was held for the benefit of Mark Laliberte's campaign.

The facts here also show that the October 23rd event was coordinated with the Laliberte campaign. The same person served as treasurer for both the party unit and the Citizens for Laliberte committee. The party unit chair and Mr. Laliberte's campaign manager, Ms. Belak, discussed the event before it occurred and Mr. Laliberte agreed to attend. The invitation emails sent for the event stated that Mr. Laliberte would attend and one email specifically said that the event was being held to support Mr. Laliberte. Because Mr. Laliberte and Ms. Belak knew about and approved the October 23rd event, this event was, in part, an approved expenditure made on behalf of the Laliberte campaign.

Minnesota Statutes section 10A.01, subdivision 4, provides that an approved expenditure is a contribution to the candidate. Here, the October 23rd event cost \$1,008.39. As discussed above, at least half of the event was a contribution to the Laliberte campaign in the form of an approved expenditure. Half of the cost of the October 23rd event is \$504.20. Consequently, the October 23rd event constitutes a \$504.20 in-kind contribution from House District 54A RPM to the Citizens for Laliberte committee. House District 54A RPM must amend its 2008 year-end report to include this contribution.

Minnesota Statutes section 10A.27, prohibits a political party unit from giving, and a candidate's principal campaign committee from accepting, more than \$ 5,000 in an election year. A committee or party unit that violates this provision is subject to a civil penalty of up to four times the amount by which the contribution exceeded the limit. The penalty imposed for the first violation of this statute, however, is usually limited to one times the amount of the excess contribution. In addition, the candidate's committee is typically ordered to return the amount of the excess contribution to the contributor.

Here, House District 54A RPM gave \$5,000 in cash and \$504.20 in the form of an approved expenditure to the Citizens for Laliberte committee. The aggregate amount of these contributions exceeds the applicable limit by \$504.20. This is the first violation of this contribution limit for both House District 54A RPM and the Citizens for Laliberte committee. Consequently, a civil penalty of \$504.20 is imposed against House District 54A RPM. Typically, the Citizens for Laliberte committee also would be ordered to return \$504.20 to House District 54A RPM and to pay a civil penalty of \$504.20. The Citizens for Laliberte committee, however, terminated its registration with the Board on December 31, 2011. Consequently, the

return of the contribution and the collection of the civil penalty against the Citizens for Laliberte committee will be suspended. If, in the future, Mark Laliberte registers a principal campaign committee with the Board, the civil penalty is reinstated and must be paid by Mr. Laliberte's new committee.

The Board recognizes that as a result of the 2012 redistricting, the House District 54A RPM party unit committee has been renamed the House District 66A RPM party unit committee.

Based on the evidence before it and the above analysis the Board makes the following:

Findings Concerning Probable Cause

1. There is probable cause to find that \$504.20 of the cost of the October 23, 2008, event was an in-kind contribution in the form of an approved expenditure from House District 54A Republican Party of Minnesota to the Citizens for Laliberte committee.
2. There is probable cause to find that in 2008, House District 54A Republican Party of Minnesota gave, and the Citizens for Laliberte committee accepted, a contribution that exceeded the applicable contribution limit by \$504.20.

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

ORDER

1. House District 54A Republican Party of Minnesota, now known as House District 66A Republican Party of Minnesota, must amend its 2008 year-end report to show an additional \$504.20 in-kind contribution to the Citizens for Laliberte committee in the form of an approved expenditure.
2. The Board imposes a civil penalty of \$504.20, one times the amount by which the contribution exceeded the applicable limit, on House District 54A Republican Party of Minnesota, now known as House District 66A Republican Party of Minnesota.
3. House District 54A Republican Party of Minnesota, now known as House District 66A Republican Party of Minnesota, is directed to forward to the Board payment of the civil penalty by check or money order payable to the State of Minnesota within thirty days of receipt of this order.
4. The Board orders the Citizens for Laliberte committee to return \$504.20 to House District 54A Republican Party of Minnesota and imposes a civil penalty of \$504.20, one times the amount by which the contribution exceeded the applicable limit, on the Citizens for Laliberte committee. The return of the contribution and the collection of the civil penalty from the Citizens for Laliberte committee are suspended. If Mark Laliberte registers a principal campaign committee with the Board in the future, the civil penalty is reinstated and must be paid by Mr. Laliberte's new committee.

5. The Board investigation of this matter is hereby made a part of the public records of the Board pursuant to Minnesota Statutes section 10A.02, subdivision 11, and upon payment of the civil penalties imposed herein, this matter is concluded.

Dated: August 7, 2012

s/Greg McCullough
Greg McCullough, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes

Minn. Stat. § 10A.01, subd. 4. Approved expenditure. "Approved expenditure" means an expenditure made on behalf of a candidate by an entity other than the principal campaign committee of the candidate, if the expenditure is made 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. An approved expenditure is a contribution to that candidate.

Minn. Stat. § 10A.27, subd. 1. Contribution limits.

(a) Except as provided in subdivision 2, a candidate must not permit the candidate's principal campaign committee to accept aggregate contributions made or delivered by any individual, political committee, or political fund in excess of the following:

. . . .

(4) to a candidate for state representative, \$500 in an election year for the office sought and \$100 in the other year; and

. . . .

(c) A lobbyist, political committee, political party unit, or political fund must not make a contribution a candidate is prohibited from accepting.

Minn. Stat. § 10A.27, subd. 2. Political party and dissolving principal campaign committee limit.

A candidate must not permit the candidate's principal campaign committee to accept contributions from any political party units or dissolving principal campaign committees in aggregate in excess of ten times the amount that may be contributed to that candidate as set forth in subdivision 1. The limitation in this subdivision does not apply to a contribution from a dissolving principal campaign committee of a candidate for the legislature to another principal campaign committee of the same candidate.

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

**Findings and Order in the Matter of the Complaint of Bob Murray
regarding House District 54A Republican Party of Minnesota and Citizens for (Mark)
Fotsch.**

The Allegations of the Complaint

On March 30, 2012, the Campaign Finance and Public Disclosure Board received a complaint from Bob Murray, but the complaint was not signed. At the May 1, 2012, meeting, the Board moved to accept the complaint even if Mr. Murray did not sign it and to lay it over to the next meeting. Mr. Murray came to the Board's offices and signed the complaint on May 4, 2012. To allow the investigation to be completed, the Board laid the matter over at its June and July meetings.

The complaint alleges that an anti-incumbent literature piece reported as an expenditure on the House District 54A Republican Party of Minnesota 2010 year-end report actually was an in-kind contribution to Citizens for (Mark) Fotsch because the same person was the treasurer for both the party unit and the campaign committee. This fact suggests that the literature piece was coordinated with the candidate and, therefore, was a contribution to the candidate.

The complaint also alleges that the anti-incumbent literature piece was not a party unit expenditure because the disclaimer on the piece stated that it was "prepared and paid for by local Republicans in in HD54A."

The Response to the Complaint

House District 54A RPM submitted a response to the complaint on June 4, 2012. The party unit submitted additional information in early July. Don Hewitt, the party unit treasurer in 2010, also gave a statement to the Board.

In its response, House District 54A RPM states that in 2010, Mike Boguszewski was the chair of House District 54A RPM and Lisa Belak was the deputy chair. Under the House District 54A RPM constitution, the chair and deputy chair also are deputy treasurers of the party unit. House District 54A RPM, however, did not list either Boguszewski or Belak as a deputy treasurer on the registration form that it filed with the Board.

In the spring of 2010, House District 54A RPM adopted a plan to contribute an initial \$1,000 to each RPM candidate for the state legislature and to then contribute an additional \$1,000 for every \$5,000 raised independently by the candidate. House District 54A RPM's budget committee decided that if there was money left in the party unit's contribution fund in October, the committee would make recommendations at that time about how to spend this money.

Mark Fotsch was the RPM candidate for the House District 54A seat. House District 54A RPM made two \$1,000 contributions to Citizens for (Mark) Fotsch. Mr. Hewitt was also the treasurer of Citizens for (Mark) Fotsch.

In October 2010, House District 54A RPM had money left in its treasury. The budget committee prepared two options for spending this money to present at the next party unit meeting. As the party unit treasurer, Mr. Hewitt was a member of the budget committee and had participated in the committee's preparation of the initial budget in early 2010. Mr. Hewitt, however, did not attend the October 2010 meeting where the budget committee developed the recommendations for spending the remaining party unit money.

House District 54A RPM met on October 13, 2010. When the meeting got to the agenda item about spending additional money, Ms. Belak "asked to pause the meeting . . . [and] clearly stated that any candidates or members of candidate campaigns needed to leave the room." Ms. Belak then "explained the need for separation between the BPOU and the campaigns and clarified that there could be no . . . coordination of efforts." Mr. Hewitt, along with several others, left the room.

While Mr. Hewitt was gone, the party unit decided to spend approximately \$4,500 on an anti-incumbent literature piece that would be mailed to undecided voters in the district. The piece was mailed on October 27, 2010, and stated that "[t]his is an independent expenditure not approved by any candidate or candidate's committee." Mr. Hewitt never suggested that the party unit do this mailing nor knew that it was going to take place. The literature piece was designed by Ms. Belak and printing and mailing were arranged by Mr. Boguszewski.

When Mr. Hewitt prepared the party unit's 2010 year-end report, he reported the cost of the anti-incumbent literature piece as an expenditure. For several years, House District 54A RPM had mailed a get-out-the-vote literature piece just before the election. Mr. Hewitt believed that the bills the party unit received for the anti-incumbent literature piece were for a get-out-the-vote piece similar to those that had been sent in the past. Consequently, Mr. Hewitt reported those costs as expenditures on the year-end report.

Board Analysis

Initially, the complaint alleges that the anti-incumbent literature piece was not a party unit expenditure because the disclaimer says that it was "prepared and paid for by local Republicans in House District 54A." All evidence in the record, however, shows that this mailing was a party unit expenditure. Whether the party unit used the correct language in its disclaimer is a question governed by Minnesota Statutes section 211B.04. The Board has no jurisdiction to resolve questions arising under chapter 211B.

The complaint also alleges that the anti-incumbent literature piece could not have been an independent expenditure because Don Hewitt was the treasurer for both House District 54A RPM and Citizens for (Mark) Fotsch and, thus, there had to have been coordination between

the party unit and the candidate. An expenditure cannot be independent when coordination of effort exists.

Minnesota Statutes section 10A.01, subdivision 18, provides that an independent expenditure is “an expenditure expressly advocating the election or defeat of a clearly identified candidate, if the expenditure is 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.”

In its advisory opinions, the Board has emphasized that whether coordination of effort exists is a question of fact. The Board also has clearly stated that there must be a high wall of separation between the party unit and its candidates if the party unit’s expenditures are to qualify as independent expenditures.

Here, Mr. Hewitt was the treasurer of both Mark Fotsch’s campaign committee and the party unit. This fact raises the question of whether there was coordination of effort in this case.

But other facts in the record show that House District 54A RPM took several steps to separate Mr. Hewitt from the decision-making process for the anti-incumbent literature piece. Mr. Hewitt did not participate in the budget committee meeting where the piece was proposed. He was asked to leave the party unit meeting where the literature piece was approved and he did, in fact, leave this meeting. The cost of the literature piece was authorized by Mr. Boguszewski and Ms. Belak in their capacities as deputy treasurers of the party unit. Taken together, these facts show that there was sufficient separation between the party unit and Mr. Hewitt in this case and that there was no coordination of effort between House District 54A RPM and Citizens for (Mark) Fotsch with regard to the anti-incumbent literature piece. The anti-incumbent literature piece therefore was an independent expenditure.

Because the anti-incumbent literature piece was an independent expenditure, House District 54A RPM should have reported this expense on the independent expenditure schedule of its year-end report instead of on the expenditure schedule. When a party unit remedies a reporting violation related to the misclassification of an expenditure within 10 days of being ordered by the Board to do so, the statutes do not provide for a civil penalty. Because Mr. Hewitt did not know about the independent expenditure, one of the individuals who was deputy treasurer in 2010 must sign the affidavit of independent expenditures for the amended 2010 year-end report.

Finally, Minnesota Statutes section 10A.14, subdivision 2, requires a party unit to include the name, address, and e-mail address of any deputy treasurers on its registration form. Here, House District 54A RPM did not include this information on the registration form in effect in 2010. To correct this violation, House District 54A RPM is ordered to update its current registration to include the required information about anyone currently serving as deputy treasurer of the party unit.

Based on the evidence before it and the above analysis the Board makes the following:

Findings Concerning Probable Cause

1. There is no probable cause to find that the anti-incumbent literature piece was not an independent expenditure.
2. There is probable cause to find that House District 54A Republican Party of Minnesota incorrectly reported the cost of the anti-incumbent literature piece as an expenditure instead of an independent expenditure on its 2010 year-end report.
3. There is probable cause to find that House District 54A Republican Party of Minnesota did not list the required contact information for its deputy treasurers on its 2010 registration form.

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

ORDER

1. Within 10 days of the date of this order, House District 54A Republican Party of Minnesota must file an amended 2010 year-end report that reclassifies the cost of the anti-incumbent literature piece as an independent expenditure. An individual who was deputy treasurer in 2010 must sign the affidavit of independent expenditures.
2. House District 54A Republican Party of Minnesota is ordered to update its current registration form to include the name, address, and e-mail address of anyone currently serving as deputy treasurer of the party unit.
3. 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.02, subdivision 11.

Dated: August 7, 2012

s/Greg McCullough
Greg McCullough, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes

Minn. Stat. § 10A.01, subd. 18. Independent expenditure. “Independent expenditure” means an expenditure expressly advocating the election or defeat of a clearly identified candidate, if the expenditure is 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. An independent expenditure is not a contribution to that candidate. An independent expenditure does not include the act of announcing a formal public endorsement of a candidate for public office, unless the act is simultaneously accompanied by an expenditure that would otherwise qualify as an independent expenditure under this subdivision.

Minn. Stat. § 10A.14, subd. 2. Form. The statement of organization must include:

.....

(4) the name, address, and e-mail address of the treasurer and any deputy treasurers.

Minn. Stat. § 10A.17, subd. 1. Authorization. A political committee, political fund, principal campaign committee, or party unit may not expend money unless the expenditure is authorized by the treasurer or deputy treasurer of that committee, fund, or party unit.