

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

**Findings in the Matter of the Complaint against the Thomas Emmer for State  
Representative Committee and Franklin Outdoor Advertising**

**Evidence Used In These Findings**

On March 26, 2009, the Campaign Finance and Public Disclosure Board (the Board) received a complaint from Susan Rego against unknown persons or associations responsible for highway billboard signs seen prior to the 2006 and 2008 state general elections. In the complaint Ms. Rego alleges that, "This billboard was not accounted for in the campaign finance report filed by the candidate...or in any affidavit of independent expenditures for the candidate filed with the state..." Failure to report campaign expenditures or independent expenditures is a violation of Minnesota Statutes Chapter 10A. Ms. Rego further provides that the billboards did not contain either a campaign disclaimer or an independent expenditure disclaimer. Therefore, the complainant was unable to identify the specific individual or association responsible for the signs and name them in the complaint.

The complaint includes a photograph of a highway billboard sign in support of Representative Tom Emmer. The complaint states that in October of 2008 the billboard in the photograph was on display near Interstate Highway 94 close to the city of Albertville. A copy of the photograph is attached to this document and marked as Exhibit 1. The complaint provides that the billboard is owned by Franklin Outdoor Advertising. Copies of correspondence between Ms. Rego and a representative of Franklin Outdoor Advertising, and information from the Franklin Outdoor Advertising website on the cost of renting the billboard were provided as evidence with the complaint.

Board staff examined reports from 2006 and 2008 and could not identify an independent expenditure or campaign expenditure for the billboard signs by any candidate, political committee, or political party unit. On April 7, 2009, the Board accepted the complaint and directed staff to open an investigation into the respective roles of the Emmer for State Representative Committee (the Emmer Committee) and Franklin Outdoor Advertising in the production and placement of the highway signs referenced in the complaint. The Board authorized staff to issue subpoenas if needed to complete the investigation. Staff notified Representative Emmer, Tom Emmer, Sr., treasurer for the Emmer Committee, and Keith Franklin, owner of Franklin Outdoor Advertising, of the complaint and offered an opportunity to answer the allegations and provide information requested by Board staff for the investigation.

On April 20, 2009, Ms. Rego supplemented her complaint by letter that states, "Last week I was told for the first time that a similar billboard (same colors and graphics and lacking a disclaimer) for the same candidate was displayed in October 2008 along Hwy 55... The nameplate on the billboard indicates it is owned by Franklin Outdoor advertising." Board staff informed Ms. Rego that the assertion of a second sign would not be included in the investigation without first person knowledge of the complainant or the identity of a witness that could provide information on the matter. On April 27, 2009, Ms. Rego identified the witness as Christine Brazelton, the 2008

Democratic Farmer Labor candidate for the legislative seat held by Representative Emmer. On May 25, 2009, Ms. Brazelton provided the Board with a photograph of the billboard sign and stated "...I took a picture of this second billboard during the 2008 campaign, as I ran for the same seat in 19B. ...I don't know exactly when the billboards went up, but I recall that it was late summer or early fall and they remained up until the election." The photograph provided by Ms. Brazelton is attached to this document as Exhibit 2.

On April 28, 2009, Tom Emmer, Sr. responded to the notification and provided that the Committee did not authorize or pay for the design, production, or display of the highway billboard sign referenced in the complaint in either 2006 or 2008. In response to a Board question Mr. Emmer also provided that he was not aware of any individual or entity that had claimed responsibility for the billboards.

### **Testimony and evidence provided by Keith Franklin**

Mr. Franklin did not respond to a Board request that he voluntarily identify the individual or association who paid for the billboard signs. Board staff issued an administrative subpoena to Mr. Franklin on April 30, 2009, requiring sworn testimony on issues related to the investigation. Mr. Franklin provided sworn testimony on May 18, 2009.

In response to a question as to the identity of the individual or association that ordered the billboard signs Mr. Franklin answered, "I did."

In response to a question whether the signs were ordered on behalf of himself as an individual or on behalf of Franklin Outdoor Advertising Mr. Franklin answered, "I own Franklin Outdoor Advertising. I did it myself." Mr. Franklin clarified that Franklin Outdoor Advertising is a sole proprietorship.

Mr. Franklin was then asked if there had been a conversation with any member of the Emmer Committee on how Mr. Franklin could support the re-election of Representative Emmer. Mr. Franklin answered, "Yes, It was Drew Emmer. I think he is his campaign manager or his assistant".

In response to a question Mr. Franklin explained the circumstances that lead to the conversation with Drew Emmer, and what he recalled of the conversation. "I called him because Tom [Representative Emmer] was at one of the meet and greet invitations at the Albertville City Hall, and he and several other representatives attended. ...I listened to all the candidates speaking, their opinions. I liked Mr. Emmer's. I liked his ideas. I said how could I help. He said I'll have Drew get a hold of you. Drew called and said I would like to put billboards up. I'm in the billboard business. He said, well, we can't pay for them. I said that's fine. I'll donate them. It wasn't a lot of conversation." In response to a follow up question Mr. Franklin stated that the conversation occurred in 2006.

In response to a question as to whether the Committee provided the photograph of Representative Emmer used on the billboard sign Mr. Franklin answered, "Right". In response to a follow up question on whether the photo was scanned or provided as a computer file Mr. Franklin answered, "...I don't recall what it was...I believe it was a photo we scanned. I don't think it was a file".

Mr. Franklin was asked if there had been any conversations with Drew Emmer or any other member of the Emmer Committee on providing billboard signs prior to the 2008 election. Mr. Franklin answered, "Not that I recall, no".

In response to a series of questions as to the number of billboard signs erected in support of Representative Emmer Mr. Franklin stated that the sign near Interstate 94 appeared in 2006 and 2008. The sign near Highway 55 appeared only in 2008. Mr. Franklin also stated that the sign on Interstate 94 had been manufactured new each year.

In response to a series of questions on the dates during which the billboard signs in support of the Emmer Committee were displayed Mr. Franklin provided that because there were no billings for the signs that exact dates were not kept. Mr. Franklin acknowledged that the signs were up during the October prior to the state general election and through election day.

In response to a question on the value of the billboard signs Mr. Franklin answered, "You charge what you can possibly get. Anywhere from \$1,000 to \$2,000 a month. Rates vary because of the supply and demand". Mr. Franklin agreed to search his records and provide information on what clients were charged for the signs before and after they were used to support the Emmer Committee.

By letter dated June 22, 2009, Mr. Franklin provided historical invoices for the billboard sign near Interstate 94. The invoices showed that in 2007 and 2008 the cost for use of the sign was \$1,300 per month. Mr. Franklin stated that the price to manufacture the sign was \$436.80, but that the retail price for the sign material would be \$1,394. Mr. Franklin also provided documentation that Franklin Outdoor Advertising is constituted as a sole proprietorship.

On June 25, 2009, Board staff contacted Mr. Franklin by phone to ask if he was aware of the requirement in Minnesota Statutes Chapter 10A to place a disclaimer on an independent expenditure made in support or opposition of a candidate. Mr. Franklin answered, "No. I have been doing public service signs for thirty years, for the Girl and Boy Scouts, the Navy, the Air Force, the Reserves. I never put a statement saying donated by Keith Franklin or paid for by Franklin Advertising on the signs, why brag about it?"

### **Testimony of Representative Emmer.**

Representative Emmer voluntarily provided sworn testimony to Board staff on June 19, 2009.

When asked if he would consider Drew Emmer a part of the Emmer Committee, Representative Emmer answered, "Drew has always worked on my campaigns with me from day one, yes".

In response to a series of questions regarding Keith Franklin Representative Emmer provided that he met Mr. Franklin in 2005, and that he believed that Mr. Franklin owned a sign company.

When asked if Mr. Franklin spoke to him at a candidate forum prior to the 2006 state election Representative Emmer provided that he did not have a specific recollection of a conversation with Mr. Franklin, but that a conversation was possible given the number of business people that attend candidate forums.

In response to a question on how and when he became aware of the billboard signs Representative Emmer provided, "...my understanding, from your Complaint, is that there was a billboard in 2006. I never saw a billboard in 2006. ...This past election cycle I did see it".

Representative Emmer stated that he saw billboard signs in support of his campaign on both Interstate 94 and Highway 55. Representative Emmer further provided that he first became aware of the signs in 2008 from phone calls he received from friends and acquaintances commenting on the sign. The phone calls occurred after Labor Day in 2008. Representative Emmer did not recall receiving any phone calls about the billboard sign in 2006.

Representative Emmer was asked if he talked to any Emmer Committee member about the signs in 2008. Representative Emmer replied that he had spoken to Drew Emmer about the signs. When asked about the substance of the conversation Representative Emmer answered, "(I) asked him if he knew about it; he told me he didn't know about it. Told him that, "You got to call Keith and get a bill and pay for it."". When asked why he told Drew Emmer to get a bill for the signs Representative Emmer answered, "...I didn't ask for it. I didn't have any involvement ahead of time. But a guy puts up a billboard; I figure somebody at some point is going to ask about it. So I told Drew, "Get a bill and pay for it"". Representative Emmer did not know if a bill was ever obtained for the signs.

### **Testimony of Drew Emmer**

Drew (Earl) Emmer voluntarily provided sworn testimony to Board staff on June 24, 2009. Mr. Emmer is identified as the Chair of the Emmer Committee on the committee registration filed with the Board.

In response to staff questions Mr. Emmer stated that he first met Keith Franklin during the 2004 or 2006 election campaign while working for Representative Emmer. Mr. Emmer recalled that Mr. Franklin was an enthusiastic supporter of Representative Emmer. Mr. Emmer also provided that he has worked with Mr. Franklin over the years on two billboard projects for associations unrelated to the Emmer Committee.

When asked if he could recall having any conversation during 2006 in which Mr. Franklin offered to help with Representative Emmer's campaign Mr. Emmer stated, "...I don't have a specific recollection of a conversation with him about helping specifically with Tom's campaign". In response to a follow up question on whether he recalled any conversation in 2006 involving an arrangement for a billboard sign Mr. Emmer answered that he did not.

In answer to a series of questions on his knowledge of the billboard signs in question Mr. Emmer did not recall ever seeing the signs in either 2006 or 2008. Mr. Emmer recalled receiving phone calls during the 2006 campaign from people commenting on the billboard; Mr. Emmer did not recall receiving phone calls commenting on the billboards in 2008.

Mr. Emmer was shown pictures of the billboard signs displayed in 2008. Mr. Emmer was asked if he recalled ever providing any photo or image of Representative Emmer to Mr. Franklin, in answer Mr. Emmer stated, "I don't know if ever. I may have provided him with campaign materials that had his photograph on it, but not that one. That's the official house directory photograph and that wouldn't be part of our campaign materials".

Mr. Emmer was read part of the deposition of Representative Emmer in which the Representative states that he directed Mr. Emmer to get a bill from Mr. Franklin and pay for the 2008 billboards with committee funds. In response to a question on whether he did contact Mr. Franklin for a bill Mr. Emmer stated, "... I didn't follow up on it because I believe my response to him was that I hadn't ordered the billboard and I didn't do anything about it after that".

### **Board Analysis**

The Board in executive session considered this matter on April 7, June 2, July 7, and August 4, 2009. At the August 4, 2009, meeting, the Board adopted Findings and an Order. The Board further considered this matter in executive session at its meeting of September 1, 2009, at which time it rescinded the order of August 4, 2009 and issued these Findings and Order.

The Board's decision is based upon the sworn testimony of Keith Franklin, Representative Thomas Emmer, Drew Emmer, correspondence from Susan Rego, Keith Franklin, and Christine Brazelton and Board records.

In her complaint Ms. Rego correctly states that the cost of the billboard signs in support of the Emmer Committee are not reported on any report filed with the Board. As the cost of the billboards are over one hundred dollars the cost of manufacturing and leasing the signs should have been disclosed as either a campaign expenditure by the candidate or as an independent expenditure by a political committee, political party unit, or by the individual providing the signs. The failure to provide disclosure on the signs and to report their cost left the public with an incomplete financial record of the elections in House District 19B in 2006 and 2008.

Responsibility to report the cost of the billboard signs is determined by whether or not the signs were independent expenditures by Keith Franklin. Independent expenditures are reported to the Board by the individual, political committee, or political party unit responsible for the expenditure as required by Minnesota Statutes, section 10A.20, subdivision 6a. An individual who makes an independent expenditures is not required to register with the Board, but is required to file a report disclosing the candidate the expenditure was for or against, a description of the goods or services purchased or provided for the independent expenditure, and the total value of each independent expenditure. An independent expenditure is not a contribution to a candidate, and is not reportable by the candidate's campaign committee.

There is no doubt from the testimony provided during the investigation that Keith Franklin carried out the design, production and placement of the billboard signs through his company Franklin Outdoor Advertising. However, under the provisions of Minnesota Statutes, section 10A.01, subdivision 18, to classify the billboards as independent expenditures the decision by Mr. Franklin to erect the billboards must have been made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, Representative Emmer, or any member of the Emmer Committee, or any agent of the Emmer Committee. This is a very high standard of separation. From the testimony there is reason to believe that the required separation was breached during 2006.

## **2006 Billboard**

Mr. Franklin's testimony is that it was his idea to support the Emmer campaign, and to provide that support through a billboard sign. The point at which Mr. Franklin's decision to supply the billboard ceased to be an independent expenditure occurred during the phone conversation with Drew Emmer before the sign was created. Mr. Franklin told Drew Emmer that he would like to support the campaign by putting up a billboard. Mr. Emmer told Mr. Franklin that the committee is not able to pay for the sign and Mr. Franklin responds that he will donate the sign. Mr. Emmer did not tell Mr. Franklin that the campaign could not be involved with the sign, nor did Mr. Emmer express any concern over the propriety of the conversation. Mr. Franklin testified that Mr. Emmer left the impression that the sign would be a good idea, which is at least implied and possibly express consent for the expenditure. By definition, the billboard ceased to be an independent expenditure at that point.

Cooperation with the expenditure would also occur if Mr. Emmer either provided the image of Representative Emmer used on the sign, or directed Mr. Franklin to the Legislative web site where a high resolution version of the photograph used in the sign is available for download. The testimony of Mr. Franklin and Mr. Emmer on the origin of the photograph is contradictory and is not relied upon in the determination that the 2006 billboard was a donation from Keith Franklin to the Emmer Committee.

The Board having found reason to believe that the 2006 billboard sign was not an independent expenditure the sign then would be an in-kind contribution to the Emmer Committee from Keith Franklin. In-kind contributions to a candidate's committee are disclosed on the candidate's report to the Board as both a contribution to the committee and as an expenditure by the committee. In this particular case there is no reason to believe that the Emmer Committee treasurer knew of the contribution and expenditure, and therefore did not knowingly omit the information from the committee's report.

In-kind contributions are limited by the contribution limit of the entity that makes the contribution and by limits applicable to certain donors in the aggregate. The maximum in-kind contribution that Mr. Franklin could donate to the Emmer Committee in 2006 was \$500. Determination of the exact value of the in-kind donation is not required, since there is sufficient evidence to find reason to believe that the value of the sign exceeded applicable contribution limits in 2006.

## **2008 Billboards**

The billboard signs erected by Mr. Franklin in 2008 are subject to the same determination of whether the expenditures for the signs were independent or an in-kind donation to the Emmer Committee. Mr. Franklin states in his deposition that there was no conversation with any member of the Emmer Committee after the 2006 election and prior to the 2008 election regarding the signs. There is the question of whether the conversation in 2006 between Mr. Franklin and Mr. Emmer affects the classification of the expenditures for the signs displayed in 2008. The Board finds nothing in the definition or reporting requirements for independent expenditures to indicate that providing an in-kind donation in one election cycle precludes the opportunity to make an independent expenditure of similar goods or services in a subsequent election cycle.

With no evidence of communication between the Emmer Committee and Mr. Franklin regarding the signs during the 2008 election cycle the Board concludes that the 2008 signs are independent expenditures. To provide disclosure of the value of the signs Mr. Franklin will be required to file an Affidavit of Independent Expenditure and supporting report with the Board.

Minnesota Statutes section 10A.17, subdivision 4, requires any individual or entity that makes an independent expenditure to include a disclaimer that the activity is not approved by the candidate and that the candidate is not responsible for the material. Mr. Franklin admits in his testimony that none of the signs contained an independent expenditure disclaimer. However, a penalty is applied for failure to provide the independent expenditure disclaimer only if the person violating the requirement did so with knowledge of the statute. Mr. Franklin's statement is that he was not aware of the need for a disclaimer. Having no evidence that Mr. Franklin had prior experience or exposure to the requirements of the statute the Board may not impose a penalty for failure to include a disclaimer. The Board notes that Mr. Franklin now has notice of the requirement for any other independent expenditure he may make in the future.

**Based on the above Statement of the Evidence, the Board makes the following:**

### **Findings**

1. There is reason to believe that the billboard sign displayed in 2006 in support of Representative Emmer was an in-kind contribution from Keith Franklin to the Emmer Committee.
2. There is reason to believe that the value of the billboard sign exceeded the 2006 contribution limits applicable to a principal campaign committee for the Minnesota Legislature.
3. There is no probable cause to believe that the Emmer Committee intentionally excluded the in-kind donation of the 2006 sign from the committee's Report of Receipts and Expenditures filed with the Board.

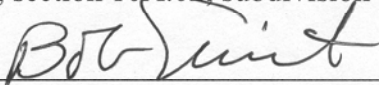
4. There is probable cause to believe that the billboard signs displayed in 2008 in support of Representative Emmer were independent expenditures by Keith Franklin.
5. There is probable cause to believe that Keith Franklin failed to file an Affidavit of Independent Expenditure and supporting report with the Board disclosing the cost of the 2008 signs.
6. There is probable cause to believe that the 2008 signs failed to contain the independent expenditure disclaimer required by Minnesota Statutes.
7. There is no probable cause to believe that Mr. Franklin knowingly omitted the independent expenditure disclaimer, or had knowledge of the requirement.
8. Mr. Franklin has filed with the Board a report of independent expenditures related to the 2008 billboard signs.

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

**Conclusions**

1. The Board will enter into a period of conference and conciliation with the Emmer Committee in order to attempt to resolve the matter of acceptance of contributions in excess of applicable limits by entry into a conciliation agreement. The Board directs the Executive Director to negotiate on behalf of the Board and to report back to the Board at its next meeting.
2. Keith Franklin has filed with the Board a report of independent expenditures for 2008 in form and content consistent with statutory requirements. There is no continuing violation with respect to Mr. Franklin. A copy of the report is attached as Exhibit 3.
3. 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.

Signed: September 1, 2009

  
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Bob Milbert, Vice Chair  
Campaign Finance and Public Disclosure Board

**Attachments**

- Exhibit 1
- Exhibit 2
- Exhibit 3



## Relevant Statutes

**Minnesota Statutes 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.

**Minnesota Statutes 10A.17, Subd. 4. Independent expenditures.** An individual, political committee, political fund, principal campaign committee, or party unit that independently solicits or accepts contributions or makes independent expenditures on behalf of a candidate must publicly disclose that the expenditure is an independent expenditure. All written communications with those from whom contributions are independently solicited or accepted or to whom independent expenditures are made on behalf of a candidate must contain a statement in conspicuous type that the activity is an independent expenditure and is not approved by the candidate nor is the candidate responsible for it. Similar language must be included in all oral communications, in conspicuous type on the front page of all literature and advertisements published or posted, and at the end of all broadcast advertisements made by that individual, political committee, political fund, principal campaign committee, or party unit on the candidate's behalf.

**Minnesota Statutes 10A.17, Subd. 5. Penalty.** A person who violates subdivision 2 is subject to a civil penalty imposed by the board of up to \$1,000. A person who knowingly violates subdivision 3a or 4 or falsely claims that an expenditure was an independent expenditure is guilty of a gross misdemeanor and subject to a civil penalty imposed by the board of up to \$3,000.

**Minnesota Statutes 10A.20, Subd. 6. Report when no committee.** A candidate who does not designate and cause to be formed a principal campaign committee and an individual who makes independent expenditures or expenditures expressly advocating the approval or defeat of a ballot question in aggregate in excess of \$100 in a year must file with the board a report containing the information required by subdivision 3. Reports required by this subdivision must be filed on the dates on which reports by committees, funds, and party units are filed.

**Minnesota Statutes 10A.20, Subd. 6a. Statement of independence.** An individual, political committee, political fund, or party unit filing a report or statement disclosing an independent expenditure under subdivision 3 or 6 must file with the report a sworn statement that the disclosed expenditures were not made with the authorization or expressed or implied consent of, or in cooperation or in concert with, or at the request or suggestion of any candidate or any candidate's principal campaign committee or agent.