

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

**IN THE MATTER OF THE STAFF REVIEW
OF THE JOHN LESCH FOR STATE REPRESENTATIVE COMMITTEE**

ORDER OF DISMISSAL

Under Minnesota Statutes section 10A.27, subdivision 10, a legislative candidate who signs the public subsidy agreement may not contribute more than \$5,000 of personal funds to the candidate's own campaign committee during a two-year election segment. Minnesota Rules, part 4503.0700 provides that contribution limits apply to the aggregate of money, donations in-kind, and outstanding loans. Minnesota Rules, part 4503.1400, subpart 3, provides that a candidate who signs the public subsidy agreement after the first year of the election cycle is agreeing to abide by spending and contribution limits for the entire election cycle. The candidate is therefore subject to the same remedies for spending or contribution violations that occurred in the first year of the election cycle prior to signing the public subsidy agreement as would apply during the second year of the election cycle after the public subsidy agreement was signed.

The John Lesch for State Representative committee is the principal campaign committee of Representative John Lesch. During 2017, Representative Lesch did not sign the public subsidy agreement. The committee's 2017 year-end report disclosed that Representative Lesch loaned his committee \$9,250 during the year, the full amount being outstanding as of December 31, 2018. A candidate who does not sign the public subsidy agreement is not limited in the amount of personal contributions or loans made to the candidate's own committee, therefore the aggregate loan amount reported in 2017 was not a violation of Chapter 10A.

The Board received a signed public subsidy agreement for the 2017 - 2018 election cycle from Representative Lesch on April 14, 2018. Consequently, effective on that date, the outstanding loans from Representative Lesch to his committee were in violation of Minnesota Statutes section 10A.27, subdivision 10. However, the Board's computerized compliance checks are not run on a committee's data until a report is filed with the Board. The next report received from the committee was the 2018 pre-primary report filed on July 30, 2018.

The pre-primary report disclosed that in 2018, Representative Lesch loaned his committee an additional \$2,500 and that the loans made in 2017 were still outstanding. In total, the outstanding personal loans from Representative Lesch to his committee during the 2017 - 2018 election cycle came to \$11,750. This amount exceeds the \$5,000 limit for candidates who have signed the public subsidy agreement by \$6,750.

The committee's treasurer e-mailed Board staff on August 2, 2018, to ask for assistance in resolving errors on the committee's pre-primary report. In discussions with the treasurer and Representative Lesch on August 3, 2018, it was determined that the cumulative amount of the loans generated compliance warnings from the reporting software when the report was filed.

In explaining the need for the loans to staff, Representative Lesch stated that the funds were necessary to pay a \$5,000 civil penalty imposed on the committee by the Board in 2017, and to pay legal fees related to the investigation that resulted in the civil penalty. Based on the committee's reports, and staff discussions with Representative Lesch, the executive director opened a staff review of the matter.

The committee's 2017 year-end report shows that without the loans the committee would have had insufficient funds to pay the legal fees and the civil penalty. The first loan from Representative Lesch to the committee in 2017 was in the amount of \$5,000, and was made in August, the same month that the committee paid a \$5,000 civil penalty to the Board. Representative Lesch also made three loans for \$1,375 each to the committee in October, November, and December. This corresponds to the committee's payments of \$1,375 to the law firm Lockridge Grindal & Nauen in October and December of 2017, and an earlier payment of \$1,500 in May of 2017. Lockridge Grindal & Nauen is the law firm of record that represented the committee during the Board investigation. The committee's payments to the law firm and the civil penalty total \$9,250, which is the same amount loaned to the committee by Representative Lesch in 2017.

In 2018, Representative Lesch loaned his committee an additional \$2,500. In March of 2018, the committee paid Meyer Njus Tanick \$2,500 as a retainer for legal services. In this case, all the loans from Representative Lesch to his committee in excess of the \$5,000 limit were directly related to the payment of legal fees incurred by the committee in 2017 and 2018.

Representative Lesch told staff that he believed that outstanding legal fees had to be paid through the committee, and therefore he loaned the committee sufficient funds to pay its legal fee obligations. A committee may use its funds to pay legal fees incurred by the committee, and report the costs as a noncampaign disbursement. However, the Board has also long recognized that a committee's legal fees may be paid by a legal defense fund that was established separate from the committee, and not registered with the Board.¹

The information gathered during the staff review shows that if Representative Lesch had known that he could pay the legal fees directly, he would not have needed to make, nor would he have made, the loans to the committee in excess of the \$5,000 limit. In this case, the excess contribution violation resulted solely from unnecessarily routing payments through the committee for costs that Representative Lesch could have paid directly. Further, the legal fees were incurred during a Board investigation of the committee that resulted in significant civil penalties on the committee and on Representative Lesch personally. For these reasons, the Board declines to further penalize the committee, and instead directs the committee to file amended 2017 and 2018 reports that remove the loans used for payment of legal fees, and the noncampaign disbursements for the legal fees, from the committee's financial activity.

¹ Advisory Opinion 101, issued in July of 1989, provides that a candidate may establish a legal defense fund to pay for legal services to defend the committee against charges filed under the Fair Campaign Practices Act. The fund did not need to register or report to the Board. https://cfb.mn.gov/pdf/advisory_opinions/AO101.pdf

Advisory Opinion 242, issued in July of 1996, assumed as a given that a legal defense fund could be established to pay for legal fees of a candidate's committee. The opinion provided that a lobbyist or principal could not contribute to the defense fund because of the gift prohibition in Minnesota Statutes Section 10A.071. https://cfb.mn.gov/pdf/advisory_opinions/AO242.pdf

In 2010, Board members reviewed and concurred with staff advice that the concept of a legal defense fund may be extended to include the establishment of a fund to pay for legal fees and other costs related to an election recount.

Order

Upon receipt of amended reports for 2017 and 2018 from the John Lesch for State Representative committee, the staff review of this matter is dismissed and hereby made a part of the public records of the Board pursuant to Minnesota Statutes section 10A.02, subdivision 11.

/s/ Carolyn Flynn

Date: September 12, 2018

Carolyn Flynn
Chair, Campaign Finance and Public Disclosure Board