

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

.....
**April 3, 2012
Room 225
Minnesota Judicial Center**
.....

MINUTES

The meeting was called to order by Chair McCullough.

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

Member Wiener arrived during the Chair's report.

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

MINUTES (March 6, 2012)

Member Peterson's motion: To approve the March 6, 2012, minutes as drafted.

Vote on motion: Unanimously passed. (Beck abstained, Wiener absent)

CHAIR'S REPORT

New Member Introductions

Chair McCullough welcomed George Beck to the meeting.

Mr. Beck is a former Administrative Law Judge and was appointed by Governor Dayton to replace Member Swenson with a term ending in January of 2016.

Board meeting schedule

The next Board meeting is scheduled for Tuesday, May 1, 2012. Member Luger informed Members that he may have a conflict with the June 5, 2012, meeting date.

Resolutions recognizing Members Bettermann and Swenson

The terms of members Bettermann and Swenson expired in January. Member Bettermann served eight years and Member Swenson served two years on the Board. Resolutions were made and adopted recognizing them for their service.

Member Scanlon's motion: RESOLVED, that the Campaign Finance and Public Disclosure Board recognizes Hilda Bettermann for her service from 2004 to 2012 as a

member of the Board and offers this resolution in appreciation for her investment of time and energy in support of the mission and objectives of the Minnesota Campaign Finance and Public Disclosure Board.

Vote on motion: Unanimously passed.

Member Wiener's motion: RESOLVED, that the Campaign Finance and Public Disclosure Board recognizes David Swenson for his service from 2010 to 2012 as a member of the Board and offers this resolution in appreciation for his investment of time and energy in support of the mission and objectives of the Minnesota Campaign Finance and Public Disclosure Board.

Vote on motion: Unanimously passed.

EXECUTIVE DIRECTOR'S TOPICS

Executive Director Goldsmith reported on recent Board office operations. Following that report, Mr. Goldsmith introduced the discussion topic related to requests for exemption from disclosure requirements in certain situations.

Discussion of procedure for requesting exemption from requirement of a contributor to provide identifying information

Mr. Goldsmith explained to the Board that the procedures for requesting an exemption from the requirement that a donor provide the donor's name, address, and employment when contributing more than \$100 to a political committee or fund were not entirely clear. Mr. Goldsmith presented the Board with a memorandum which resulted from a staff review of the statutes and rules governing the exemption request process. A copy of the memorandum is attached to and made a part of these minutes.

Mr. Goldsmith explained that the discussion presented in the memorandum relates only to requests from individuals; not to requests from associations. Also, the memo does not attempt to examine the statutory and constitutional law related to the actual granting or denying of exemption requests.

Minnesota Statutes section 10A.20, subdivision 9, provides the statutory basis for the exemption application process. Administrative rules to more fully implement the process have been in place since at least 1983. However, the Board has no experience in this area because no individual exemption request has ever been presented to the Board.

Mr. Goldsmith reviewed the memorandum with the Board and the Board discussed the various procedural questions raised by the statutes and rules. Mr. Goldsmith answered questions and provided information as requested.

In particular, the Board discussed issues relating to a requester's right to proceed anonymously. The Board considered whether a requester would be anonymous to the Board itself or only to the public. The Board also discussed the fact that there may be situations in which even an application submitted with a pseudonym would allow identification of the requester based on detailed information provided to prove the merit of the request under the required "clear and convincing evidence" standard.

The Board generally agreed that it would be expected that all applicants would wish to proceed anonymously. The Board also discussed the question of whether the application was to be anonymous only with respect to the public or also with respect to the Board and staff. It was the sense of some members that there may be times when the Board would need to know an applicant's true identity such as when credibility determinations needed to be made. The Board suggested that staff consider a procedure under which the Executive Director would accept the anonymous application, subject to further Board review of the degree of anonymity needed for that particular proceeding.

Board members also generally agreed that there might be cases where a person proceeding under a pseudonym may need further protection to actually maintain the person's anonymity. Staff had suggested a dual level of anonymous proceedings; one level under which the applicant proceeded under a pseudonym but the application was heard in public session and a second level under which the application itself was confidential and the application would be considered in a meeting closed to the public.

Members discussed the concept of permitting applicants to request a higher level of protection of the applicant's anonymity than merely proceeding in a public meeting using a pseudonym. It was the consensus of the Board that staff should continue to analyze and draft procedures that would implement such a concept.

Members also discussed the possible need to evaluate the credibility of an applicant in person, although they recognized that the statute requires the Board's order to be issued "without hearing." However, the rules specifically provide for a hearing relating to the need to proceed anonymously.

The Board discussed and recognized the right of an applicant to withdraw the application at any time. Thus, if the applicant asks to proceed anonymously or through a confidential proceeding and that request is denied, the applicant should be permitted to withdraw the application rather than going forward under circumstances less protective than those the applicant requested.

A member asked Mr. Goldsmith whether an applicant could waive the requirement that an order on an application for exemption be issued within 30 days of the request. Mr. Goldsmith explained that it was typically the Board's position that deadlines that appeared to be put in

place for the benefit of a person, in this case the applicant could be waived by that person. Nevertheless, Mr. Goldsmith said that staff believed that it would be possible in most cases to meet the 30 day time limit.

The Board discussed the procedure that would be followed if either the applicant or some other interested party objected to a Board order concerning an exemption request. Staff explained that a contested case hearing through the Office of Administrative Hearings was required. Mr. Goldsmith discussed his recent meeting with the Chief and Assistant Chief Judges of the Office of Administrative Hearings regarding the contested case rights available to anonymous parties. The Board considered the question of whether, having initiated a contested case, the Board could offer the objector an optional review before the Board prior to the actual commencement of the contested case proceeding.

Members generally agreed that it would be beneficial to offer the objector an opportunity for Board reconsideration of the matter before formal submission as a contested case. It was observed that this process could be implemented as a part of a scheduling order in the contested case or as a Board procedure.

Mr. Goldsmith thanked the Board for its discussion and indicated that staff would incorporate the Board's feedback into a procedure document that could be considered for adoption at the Board's next meeting.

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:

Consent Items

Confirmation of the administrative termination for the following lobbyist at the request of the lobbyist association:

Jim Monroe, Executive Director for MAPE, requests the termination of lobbyist registration for Robert Haag, who left employment effective 5/31/2010.

After discussion the following motion was made,

Member Luger's motion: To approve the consent items.

Vote on motion: Unanimously passed.

Discussion Items

Waiver Requests

<u>Name of Candidate or Committee</u>	<u>Reason for Fine</u>	<u>Late Fee Amount</u>	<u>Civil Penalty Amount</u>	<u>Factors for waiver</u>	<u>Board Member's Motion</u>	<u>Motion</u>	<u>Vote on Motion</u>
Wersal for Justice, Brian Cragoe	2010 Year-end Report	\$1000	\$1000	The 2010 Report was filed on Sept. 1, 2011. Mr. Cragoe attended the Oct 2011, mtg and spoke briefly regarding the reasons the report was late. Mr. Cragoe had many health and personal issues in January 2011 that continued until Mid-May. The report for 2010 had reconciliation issues and staff wanted Mr. Cragoe to respond to those issues before the waiver was reviewed by the Board. An amended report was filed resolving the issues. The 2011 report reconciles with the committee's bank statement.	Luger	To waive the late fee and civil penalty.	Unanimous
Joshua Bargfried, O'Connel for House	2011 Year-end Report	\$150	\$0	At the end of 2010 the campaign had unpaid bills owed to the candidate. The candidate thought his campaign was over. The committee has terminated.	Luger	To waive the late fee.	Unanimous
Laurie Olmon	2011 Year-end Report	\$550	\$0	Ms. Olmon terminated her committee. She was dealing with some health and personal issues in 2011.	Beck	To waive the late fee.	Unanimous
Neighbors for Iverson, Lisa Foster	2011 Year-end Report	\$225	\$0	Treasurer's computer crashed before the end of 2011. A no change report was filed for 2011. Staff left a message report was not filed on 2/1.	No Motion		
Corey Day, Impact Minn	2011 Year-end Report	\$200	\$0	The committee registered in Aug 2010 and made mostly in-kind independent expenditures. In 2010 the committee raised and spent only \$100 cash. Filed a no change report for 2011. Mr. Day states committee changes in the past month; however, the treasurer is the same as in 2010.	No Motion		
Joan Roisum, North Star SFAA	2011 Year-end Report	\$175	\$0	The committee began using the software for the YE 2010 report. On Jan 24 the treasurer electronically filed the 2010 report thinking it was the 2011 report. Staff made calls on Jan 31 and Feb 8 stating the 2011 report was not filed. The 2011 report was uploaded on Feb 9.	No Motion		
William Kuisle	2011 Year-end Report	\$125	\$0	Uses the software. Filed electronically 2006-2008. Printed reports for 2009, 2010, 2011, mailed by candidate. CFR log does not show attempts to electronically file 2011.	No Motion		
Somali Action Alliance, Abdifatah Gure	2011 Year-end Report	\$350	\$0	Treasurer states he was traveling at the end of Jan and into Feb.	No Motion		
Jeff Hatlewick, Mark Thorson Campaign	2011 Year-end Report	\$25	\$0	Software user who fled an amended 2010 report marked no change 3 times (1/19, 1/30, and 2/2) instead of the 2011 report, which was filed on 2/1.	No Motion		

Informational Items

A. Payment of a late filing fee for 2011 Report of Receipts and Expenditures:

Gary Meyer for MN Rep, \$50
Anne Nolan Campaign, \$450
Michael Paymar Volunteer Committee, \$25
Donna Swanson for St Paul, \$25
CWA Cope, \$25
Faithful Citizens Political Fund, \$100
7th Congressional District DFL, \$25
Lyon County DFL, \$25

B. Payment of a late filing fee for January 17, 2012, Lobbyist Disbursement Report:

Kris Jacobs, Jobs Now Coalition, \$15
Mary O'Brien, Nurse Family Partnership, \$40

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

Tim Mahoney for House, \$465- 7th installment

D. Payment of a civil penalty for exceeding 2011 aggregate party limit:

Paul Torkelson for State Representative, \$100. During 2011, the Committee accepted \$1,400 in contributions from special sources. The total amount of these contributions exceeded by \$100 the applicable limit on aggregate contributions from special sources, which for a state representative candidate was \$1,300. Representative Torkelson entered into a conciliation agreement on March 10, 2012.

E. Payment of a civil penalty for a contribution during 2010 legislative session:

John Arlandson, \$250
Rod Halvorson, \$250

ADVISORY OPINION REQUESTS

Advisory Opinion Request #424 – Use of principal campaign committee funds to pay the costs of holding a reception when the candidate leaves office.

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

Advisory Opinion #424 has been made public by release of consent from the requester.

The Advisory Opinion request was received by the Board on March 6, 2012, from a treasurer of a principal campaign committee.

The request asks if principal campaign committee funds may be used to pay for a reception honoring the candidate, who has decided to retire from public service. The Board was asked a similar question in Advisory Opinion 285, which is also attached to the minutes.

The draft opinion provides that under the specifics of the request costs of the event may be paid for with committee funds and reported to the Board as noncampaign disbursements.

The Board discussed the request and the applicable provisions of Chapter 10A.

After discussion, the following motion was made:

Member Scanlon's motion: To adopt the Advisory Opinion #424 as drafted.

Vote on motion: Unanimously passed.

Advisory Opinion #425 - Application of chapter 10A to a conduit fund operated by a union.

Staff asks Members to lay the matter over until the May meeting.

After discussion, the following motion was made:

Member Peterson's motion: To lay Advisory Opinion #425 over until the May meeting.

Vote on motion: Unanimously passed.

Advisory Opinion #426 - Relating to ballot question disclosure.

After discussion, the following motion was made:

Member Luger's motion: To lay Advisory Opinion #426 over until the May 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:

Findings in the matter of the acceptance of a contribution by the 8th Congressional District DFL from an unregistered association Klun Law Firm without the proper disclosure

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

Findings in the matter of the Complaint of Steven Timmer regarding the Citizens for Leidiger Committee

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

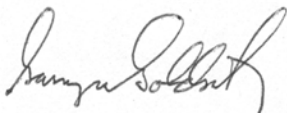
Findings in the matter of the Complaint of Mark Ward regarding Daniel Schleck and Carol Overland and lobbyist registration

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

OTHER BUSINESS

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

Respectfully submitted,



Gary Goldsmith
Executive Director

Attachments:

March 27, 2012, memorandum regarding requests for exemption from itemization of contributions made

March 19, 2012, memorandum regarding Advisory Opinion #424

Advisory Opinion #424

Advisory Opinion #285

Findings for the 8th Congressional District DFL and the Klun Law Firm

Findings for Citizens for Leidiger Committee

Findings for Daniel Schleck and Carol Overland

Minnesota

*Campaign Finance and
Public Disclosure Board*



Date: March 27, 2012

To: Board

From: Gary Goldsmith, Executive Director

Telephone: 651-296-1721

Re: Requests for exemption from itemization of contributions made

Staff anticipates questions regarding the process for requesting an individual exemption from the Chapter 10A contribution itemization requirements in the ballot question context. The purpose of this memorandum is to review the statutes and rules that govern requests for exemption so that the Board can begin its discussion of procedures to implement the statutes and rules.

The discussion in this memorandum relates only to requests from individuals; not to requests from associations. Also, this memorandum does not attempt to examine the statutory and constitutional law related to the actual granting or denying of exemption requests.

Minnesota Statutes section 10A.20, subd. 9, provides the statutory basis for the exemption application process. Administrative rules to more fully implement the process have been in place since at least 1983. However, the Board has no experience in this area because no individual exemption request has ever been presented to the Board. The statutes and rules are reproduced at the end of this memorandum.

That there a number of procedural provisions in the statutes and rules where clarification by the Board is required. The questions below identify some of the issues that arise when considering how the exemption request process is to be implemented.

Staff does not propose that the Board take action at the April meeting on any of the issues discussed in this memorandum, but rather that the Board discuss the issues and provide staff with insight and direction so that staff can prepare a more focused document for consideration and possible action at the May meeting.

Question 1: What does "anonymous" or "anonymously" mean?

The statutes and rules are unclear as to whether proceeding anonymously means anonymously with respect to the Board and staff or only anonymously with respect to the public. Additionally, does the right to proceed anonymously extend to details that might allow identification of the applicant beyond the applicant's name and address?

Rule 4525.1000, subpart 2, provides for proceeding with a fictitious name and through a representative. Under that subpart, the application may be signed by the applicant using the fictitious name or by the representative.

Question 2: At what point in the process does the need to proceed anonymously arise?

Minn. Stat. § 10A.20, subd. 10, states that an application for exemption must be decided by the Board within 30 days "without hearing". However, the statute provides for proceeding anonymously if the individual's identity were to be revealed "for the purposes of a hearing." Since the initial ruling is made without a hearing, the question arises as to whether the applicant may proceed anonymously from the initiation of the process.

Recognizing that the purpose of both the exemption itself and of the anonymous proceeding is to protect the identity of a political donor or potential donor, the Board could conclude that the right to proceed anonymously arises at the time of the initial application. The right would accrue at the time of application if there is the potential for reprisal if the applicant's identity may be disclosed in a hearing that might occur later in the process.

Question 3: How does the proof of the need to proceed anonymously differ from the proof required to be granted an exemption?

Minnesota Statutes, section 10A.20, subd. 8, states that an individual exemption must be granted if the applicant "demonstrates by clear and convincing evidence that disclosure would expose the [individual] to economic reprisals, loss of employment, or threat of physical coercion."

Subdivision 9 of the same statute provides that in order to proceed anonymously, the individual applicant must show that he or she "would be exposed to the reprisals listed in subdivision 8 if the individual's identity were revealed for the purposes of a hearing."

Thus, it can be seen that the harm that must be demonstrated to proceed anonymously is the same as the harm that must be demonstrated to obtain the exemption. At most, the difference is in the degree of proof. The exemption requires "clear and convincing evidence" while the statute is silent on the degree of proof required to proceed anonymously.

For the purpose of analysis, one may assume that some lower threshold of proof is required to proceed anonymously than is required to be granted an exemption. If this is the case, however, the failure to provide evidence sufficient to justify proceeding anonymously would necessarily mean that the exemption request must be denied. The facts to be proven are the same. If the applicant cannot meet the lower burden to proceed anonymously then he or she cannot possibly meet the higher burden to justify the exemption. This result raises the prospect of an applicant being denied the right to proceed anonymously and at the same time denial of the exemption itself and public release of the application.

Proposed implementation addressing questions 1, 2, and 3: All applicants are expected to proceed anonymously without requiring separate proof of the need for anonymity. Anonymous proceedings begin with the initial filing of the application and protect the applicant's identity from the public. To the extent possible, an applicant will also be anonymous with respect to the Board and its staff. In most cases it is anticipated that this approach would result in neither Board members nor staff knowing the true identity of an applicant.

Question 4: What form of evidence is required for a person to be granted an exemption?

This question relates to form of evidence, not to the content or level of proof.

The statute requires the Board to issue its order "without hearing". Assuming that this means that the applicant will not be permitted to address the Board, the matter will be considered solely on the basis of documentary submissions from the applicant.

The Board will consider these submissions as evidence and will determine whether the submissions constitute "clear and convincing evidence" that would justify granting of the exemption.

Because the Board must decide the matter on filings by the applicant, any filing that includes evidence (as distinguished from legal arguments) should be in the form of an affidavit the truth of which is sworn to before a notary public.

Question 5: What are the public versus non-public aspects of an exemption application proceeding?

If the Board adopts a policy that presumes that all individual applicants will proceed anonymously then, in most cases, the original application and any supporting legal memoranda or other materials may be public from the time they are provided to Board members for consideration. In these cases, the Board would consider the application in public session.

In all cases, the Board's order must be public once issued. The statutes require that the order be published in the State Register.

However, the applicant is required to prove the need for an exemption by "clear and convincing evidence". The standard of "clear and convincing evidence" is a higher standard than the "preponderance of the evidence" standard that applies in most civil cases but is not as rigorous as the "beyond a reasonable doubt" standard that applies in criminal matters. An applicant's desire to provide the best evidence to meet this higher burden of proof leads to the recognition that this evidence might be so specific that it would allow the public or an employer to identify the applicant. This would defeat the applicant's right to proceed anonymously.

If an applicant believes that the application itself may identify the applicant, the applicant should be provided with a method of requesting that the application be considered in the non-public session of a Board meeting. This would result in a bifurcated procedure in which the Board first considers the merit of the applicant's request to proceed in non-public session, then considers the application itself.

The statutes and rules appear to provide for a separate determination of whether the applicant should be allowed to proceed anonymously, although they provide no detail on what happens if the request is denied. A modification of this concept could be implemented to allow the Board to determine whether an applicant should be permitted to proceed in non-public executive session rather than in a regular public session. Under the rules, when an applicant requests anonymous proceedings, the Board may hear from the applicant in a non-public session. It is possible that this concept could be adopted to the determination of whether the applicant should be able to proceed in non-public session.

Question 6: Does the applicant have any opportunity to appear personally before the Board before the Board issues its order? Does the applicant or any party objecting to the Board's order have a right to appear before the Board either in person or by written submissions prior to the initiation of a contested case hearing before an administrative law judge?

The Board must issue its order "without hearing." If the Board issues its order "without hearing" and an interested party objects, the statutes says the Board "must hold a contested case hearing", which is a hearing before the OAH. If the matter moves directly from the Board's original order to an OAH hearing, the Board will not have the opportunity to reconsider its order based on the additional information provided by the objecting party.

From a practical standpoint, it would seem to make sense for the Board to consider the arguments of a party objecting to its order before the matter is consigned to the expensive process of an OAH contested case hearing.

In the course of other Board investigations, the Board has regularly entertained requests to reconsider a Board action. The request to reconsider is routinely granted, although changes to a prior Board action are not often ordered as a result of the reconsideration.

Two questions are presented: (1) whether the statutes and rules would permit a Board hearing upon objection to its order prior to submitting the matter to a contested case hearing and (2) whether the Board would want to implement such a hearing procedure.

Question 7: What additional issues are raised if there is a contested case hearing? Staff will be consulting with the Chief and Assistant Chief Administrative Law Judge on the issues that will be raised by a contested case hearing. Those issues include the following.

1. In a before the OAH, how can the anonymity of the applicant be protected?
2. In a contested case hearing, what is the role and what are the rights of an interested party who has objected to the Board's order, thus triggering the hearing requirement?
3. If a contested case hearing is conducted by the OAH, who pays for it?

Possible procedures to address the questions presented above.

The following procedures represent an approach that would address the issues discussed above. They are presented as a starting point for Board discussion.

Procedure to apply for an exemption from the contribution disclosure requirements of Minnesota Statutes, section 10A.20, subd. 3(b).

Application procedure

1. The Board will permit any individual applicant for an exemption under Minnesota Statutes, section 10A.20, subd. 9, to proceed anonymously without any showing of need beyond the allegations of the exemption application itself. The expected application will be for an anonymous proceeding. However, an applicant may waive the right to proceed anonymously and proceed in his or her real name.
2. An anonymous proceeding is a proceeding in which the applicant's true name is not revealed to the public. Identification of the applicant to the Board or its staff will be limited to the extent possible. Board proceedings at which the applicant will appear will be in closed executive session, will not be publicly announced, and will include such precautions as reasonably necessary to preserve the anonymity of the applicant.
3. The application of an applicant who wishes to proceed anonymously must include the following:
 - a. A statement that the applicant has elected to proceed anonymously;

- b. A name by which the person wishes to be known for the purposes of the proceeding;
 - c. The name and address of a person who is authorized to receive official notices or correspondence from the board or upon whom service of legal process may be made;
 - d. The name and address of a person who will appear for the applicant during the proceedings.
4. The application must state the scope of the exemption requested in sufficient detail for the Board to understand the request. For example, an application could state that its scope is to cover all contributions made to political committees or funds supporting the Minnesota photo ID amendment.
5. Every application must include a sworn statement of the facts on which the application is based. The application must conclude with the phrase "I swear that the information contained in the above application is true and correct."
6. The truth of the application must be sworn to and signed by the applicant. In the case of an applicant who is proceeding anonymously, the applicant may sign in the name identified under section 3b above. Board staff are available to administer oaths and notarize affidavits for anonymous applicants.
7. An application may be supplemented with a letter or memorandum including any authorities or arguments that the applicant wishes to submit in support of the application.

Procedure where the content of the application itself may render the right to proceed anonymously meaningless

The following procedures apply to applications submitted for non-public consideration.

1. The application itself and any cover letter must be clearly marked "Submitted for non-public consideration." The applicant or the applicant's representative should confirm with the Board's Executive Director that the application has been received as a non-public application.
2. The Board will consider the application in non-public session at the meeting following receipt of the application. In the event that the next scheduled meeting is more than 30 days after receipt of the application, the Board will schedule a special meeting for the purpose of considering the application.
3. Consideration of the application will be undertaken in two steps. First the Board will determine whether it will accept the application as a non-public application. The applicant may provide testimony directed to the need to proceed in a non-public forum.
4. The Board will decide whether to allow the applicant to proceed in a non-public forum. The form of motion that may be considered is a motion to permit the applicant to proceed in a non-public forum. The vote of four Board members is required for the motion to pass.

5. If the motion to permit a non-public proceeding is not adopted, the applicant may withdraw the application in which case the matter will remain in the Board's executive session and no public order will be issued. Alternatively, the applicant may agree that the application may continue in public session, in which case, consideration of the application shall resume when the Board returns to its public session.
6. An applicant who withdraws an application pursuant to paragraph 5 of this section may file a subsequent application to be considered by the Board in public session.

Initial Determination

1. Except as provided in the preceding section, the Board will consider the application in public session at the meeting following receipt of the application. In the event that the next scheduled meeting is more than 30 days after receipt of the application, the Board will schedule a special meeting for the purpose of considering the application.
2. No testimony will be heard on the application during the initial determination phase.
3. An application for an exemption of the contribution itemization requirement is a request to be exempted from otherwise applicable statutory requirements. Unless the exemption is granted, the statutory requirements apply. The proper motion for Board consideration is either a motion to grant the exemption or a motion to deny the exemption. A motion to grant an exemption is adopted if it obtain the required four votes. If a motion to grant the exemption fails, the exemption is denied even if a motion to specifically deny the exemption does not obtain four votes. If the exemption is not granted, the statutory itemization requirement applies.
4. Following its consideration of the matter, the Board will issue a written order granting or denying the application. The order must include the reasons for the Board's action.
5. The Board's order will be published in the next available issue of the State Register. Notice will be given to all persons who have signed up on the Board's subscription email list for persons interested in Board actions.

Reporting contributions for which an itemization exemption has been granted.

1. If an exemption of the itemization requirement is granted, the recipient of contributions from the individual possessing the exemption is not required to obtain the individual's true name and address.
2. Contributions should be reported in the form "Anonymous Donor [Assumed Name] under Order Granting Exemption dated [Date of Order]."
3. If an exemption is granted for a contribution previously made, the contribution must be reported with the information described in paragraph 2 of this section on the next report filed by the recipient or on an amended report for the same period.

Minnesota Statutes

10A.20 Campaign Reports

Subd. 8. Exemption from disclosure. The board must exempt a member of or contributor to an association or any other individual, from the requirements of this section if the member, contributor, or other individual demonstrates by clear and convincing evidence that disclosure would expose the member or contributor to economic reprisals, loss of employment, or threat of physical coercion. An association may seek an exemption for all of its members or contributors if it demonstrates by clear and convincing evidence that a substantial number of its members or contributors would suffer a restrictive effect on their freedom of association if members were required to seek exemptions individually.

Subd. 9. [Repealed, 1978 c 463 s 109]

Subd. 10. Exemption procedure. An individual or association seeking an exemption under subdivision 8 must submit a written application for exemption to the board. The board, without hearing, must grant or deny the exemption within 30 days after receiving the application and must issue a written order stating the reasons for its action. The board must publish its order in the State Register and give notice to all parties known to the board to have an interest in the matter. If the board receives a written objection to its action from any party within 20 days after publication of its order and notification of interested parties, the board must hold a contested case hearing on the matter. Upon the filing of a timely objection from the applicant, an order denying an exemption is suspended pending the outcome of the contested case. If no timely objection is received, the exemption continues in effect until a written objection is filed with the board in a succeeding election year. The board by rule must establish a procedure so that an individual seeking an exemption may proceed anonymously if the individual would be exposed to the reprisals listed in subdivision 8 if the individual's identity were to be revealed for the purposes of a hearing.

Minnesota Rules

4525.0900 Initiating a contested case

Subpart 1. **Initiation by application.** Any person requesting an exemption under Minnesota Statutes, section 10A.20, subdivisions 8 and 10, or any other person whose rights, privileges, and duties the board is authorized by law to determine after a hearing, may initiate a contested case by making application. Except in anonymous proceedings, an application shall contain: the name and address of the applicant; a statement of the nature of the determination requested including the statutory sections on which the applicant wishes a determination made and the reasons for the request; the names and addresses of all persons known to the applicant who will be directly affected by such determination; and the signature of the applicant.

Subp. 2. **Initiation by board order.** Where authorized by law, the board may order a contested case commenced to determine the rights, duties, and privileges of specific parties.

4525.1000 Initiating anonymous proceedings

Subpart 1. **Authority.** Any person making application for an exemption from campaign reporting requirements under Minnesota Statutes, section 10A.20, subdivisions 8 and 10 may proceed anonymously if the board determines that identification of the person for the purpose of

the hearing would result in exposure to economic reprisals, loss of employment, or threat of physical coercion.

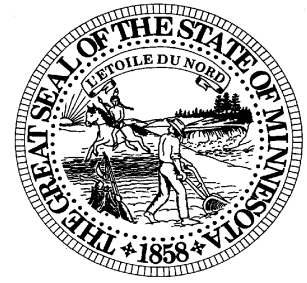
Subp. 2. **Application.** Any person wishing to proceed anonymously under this part shall make an application under part 4525.0900, subpart 1, which shall contain:

- A. A name by which the person wishes to be known for the purposes of the proceeding;
- B. The name and address of a person who is authorized to receive official notices or correspondence from the board or upon whom service of legal process may be made;
- C. A statement of the facts which lead the applicant to believe that identification of the applicant for purposes of the hearing would result in exposure to economic reprisals, loss of employment, or threat of physical coercion;
- D. The name and address of a person who will appear for the applicant during the proceedings if the applicant wishes to remain anonymous;
- E. A statement of the facts which lead the applicant to believe that exposure to economic reprisal, loss of employment, or threat of physical coercion would result from the applicant's compliance with the reporting and disclosure requirements of Minnesota Statutes, section 10A.20; and
- F. The signature of the applicant in the name by which the person wishes to be known during the proceedings or the signature of the person designated to appear for the applicant.

Subp. 3. **Determination.** Upon receipt of an application for initiation of anonymous proceedings, the board may require the applicant or the person designated to appear for the applicant to appear before a closed meeting of the board with appropriate precautions taken to preserve the anonymity of the applicant from persons other than the board and its employees. The purpose of the appearance is to enable the board to decide whether an anonymous proceeding is required.

Minnesota

*Campaign Finance and
Public Disclosure Board*



Date: March 19, 2012

To: Board Members
Counsel Hartshorn

From: Jeff Sigurdson, Assistant Director

Telephone: 651-539-1189

Re: Advisory Opinion 424

This request for an advisory opinion was received on March 6, 2012. The identity of the requestor has been released as public data. Supplemental information pertinent to the request was received on March 8, 2012, and is attached to the initial request letter.

The request asks if principal campaign committee funds may be used to pay for a reception honoring the candidate, who has decided to retire from public service. The Board was asked a similar question in Advisory Opinion 285, which is attached for reference. Because the facts and analysis are set forth in the request and the draft advisory opinion, they will not be detailed in this memorandum.

The draft opinion provides that under the specifics of the request costs of the event may be paid for with committee funds and reported to the Board as noncampaign disbursements.

I will be out of the office the week prior to the Board meeting. Please call Gary Goldsmith at 651-539-1190 if you have questions, comments, or suggestions.

Attachments:

Advisory Opinion request letter and supplemental information
Draft Advisory Opinion 424
Advisory Opinion 285

State of Minnesota
Campaign Finance & Public Disclosure Board
Suite 190, Centennial Building. 658 Cedar Street. St. Paul, MN55155-1603

THIS ADVISORY OPINION IS PUBLIC DATA
pursuant to a consent for release of information signed by the requester

Issued to: Georgeann Hall, Treasurer
Mindy Greiling Volunteer Committee
385 Transit Avenue
Roseville, MN 55113

ADVISORY OPINION 424

SUMMARY

Costs paid by a principal campaign committee for a reception given in honor of a candidate's retirement from public office may be reported as noncampaign disbursements.

FACTS

You ask the Campaign Finance and Public Disclosure Board (Board) for an advisory opinion based on the following facts:

1. You are the treasurer of the Mindy Greiling Volunteer Committee (the Committee), which is the principal campaign committee of Representative Greiling. Representative Greiling has served for twenty years as a state representative.
2. The office of state representative is up for election in 2012. However, Representative Greiling has announced that she will retire at the end of her current term and will not seek reelection to the House of Representatives or to any other elected office in 2012.
3. The filing period for candidates who wish to run for office closes on June 5, 2012.
4. The Committee would like to use some committee funds, approximately \$1,000 to \$1,500, to host a reception for Representative Greiling. The reception will be used to honor and thank Representative Greiling for her years of public service. The reception would occur on June 16, 2012.
5. No candidate seeking office in 2012 will be promoted, or will be speaking, at the event.

ISSUE

May the Committee pay for the cost of the reception to honor Representative Greiling for her years of public service?

OPINION

The Board only has authority to provide an opinion on the appropriate use of noncampaign disbursements. Expenditure made by a principal campaign committee that are not noncampaign disbursements must be for the purposes provided in Minnesota Statutes 211B.12, which is a statute not regulated by the Board. Therefore, in order for the Board to determine that principal campaign committee funds may be used to pay for the reception, the Board must conclude that the event qualifies as a noncampaign disbursement.

Noncampaign disbursements are expenditures by a principal campaign committee which are for one of the purposes listed in Minnesota Statutes, section 10A.01, subdivision 26. There are currently twenty-three purchases or payments made with principal campaign committee funds that are recognized as noncampaign disbursements by this statute. The statute also gives the Board authority to determine if a purchase or payment not listed in the statute may be classified as a noncampaign disbursement.

Noncampaign disbursements do not count against the campaign expenditure limit placed on a candidate who signs a public subsidy agreement. Noncampaign disbursements are either for a purpose unrelated to the nomination or election of a candidate, or are for a purpose only tangentially related to conducting a campaign. The Board uses its authority to recognize new noncampaign disbursements with caution so that campaign expenditure limits are not undermined. The purpose of the new noncampaign disbursement must also be consistent with existing classifications.

There are similarities between the event described in the facts of this opinion and Minnesota Statutes, section 10A.01, subdivision 26 (13), which provides that a principal campaign committee may pay as a noncampaign disbursement the "costs of a postelection party during the election year when a candidate's name will no longer appear on a ballot or the general election is concluded, whichever occurs first." This noncampaign disbursement category is not directly applicable because the reception is not a "postelection party" as Representative Greiling will not file for office and therefore will not be appearing on either the primary or general election ballot.

However, the reception will serve a purpose similar to a postelection party in that both are social gatherings of the candidate and the candidate's supporters. Whether the election was won or lost, a postelection party is primarily an opportunity for the candidate to express gratitude and appreciation to those who worked on the campaign. A reception for a candidate who is not seeking reelection is primarily an opportunity for the candidate to express gratitude and appreciation to those who worked on prior campaigns and those who worked with the candidate in carrying out the duties of public service.

For a postelection party to qualify as a noncampaign disbursement, the party must occur at a time when it is no longer possible to influence voting for the candidate. A similar effect is achieved by the proposed reception because it will occur after the deadline for filing for office has passed, which precludes the possibility of influencing the nomination or election of the candidate. Further, the requester has stipulated that the reception will not be used to promote any other candidate who might be running for office in 2012, so the cost of the reception will not be an in-kind donation to influence the election of any other candidate.

The Board was asked for an opinion on a similar set of facts in Advisory Opinion 285. In that opinion, an incumbent office holder who had decided not to run for reelection also wished to use principal campaign committee funds to pay the cost of a party to thank staff and other individuals who worked with the incumbent over the years. The Board authorized the use of principal campaign committee funds to pay for the party as a noncampaign disbursement conditioned on the party occurring after the November general election. As explained above, the objective of insuring that the reception will not influence voting for the candidate is achieved by holding the event after the close of filing for office. If the candidate is precluded from appearing on the ballot, the Board sees no useful purpose in requiring the requester to wait until November to hold the reception.

The Mindy Greiling Volunteer Committee may use its funds to pay for the reception described in the facts of this opinion. The funds spent on the event should be categorized as noncampaign disbursements on the Committee's Report of Receipts and Expenditures.

The noncampaign disbursement purpose described in Minnesota Statutes, section 10A.01, subdivision 26 (13), and the additional noncampaign disbursement recognized by this opinion, may be used for only a single event, which must occur during an election year for the office for which the candidate created the principal campaign committee.

Issued: April 3, 2012

Greg McCullough, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes

Minnesota Statutes, section 10A.01

Subd. 26. Noncampaign disbursement. "Noncampaign disbursement" means a purchase or payment of money or anything of value made, or an advance of credit incurred, or a donation in-kind received, by a principal campaign committee for any of the following purposes: ...

(13) costs of a postelection party during the election year when a candidate's name will no longer appear on a ballot or the general election is concluded, whichever occurs first; ...

The board must determine whether an activity involves a noncampaign disbursement within the meaning of this subdivision.

DRAFT - Not Adopted by Board

State of Minnesota
Campaign Finance & Public Disclosure Board
First Floor South, Centennial Building. 658 Cedar Street. St. Paul, MN 55155-1603

THE FOLLOWING PUBLICATION DOES NOT IDENTIFY
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)

RE: Application of noncampaign disbursement definitions to costs of a party upon candidate's retirement from public office

ADVISORY OPINION 285

SUMMARY

Costs paid by a principal campaign committee for a party given in an election year, after the general election, upon the retirement from public office of the principal campaign committee's candidate are noncampaign disbursements.

FACTS

You ask the Campaign Finance and Public Disclosure Board (Board) for an advisory opinion based on the following facts:

- 1) You are an elected public official, as such, are a candidate with a principal campaign committee registered with the Board.
- 2) The office you hold is up for election in 1998. However, you have announced that you will retire at the end of your current term and will not be a candidate for election in 1998.
- 3) You would like to use some of the money remaining in your principal campaign committee to give a party to thank the staff of the office you hold for their services and to thank the many people who have participated over the years in the activities and initiatives your office.
- 4) The party would be given at the end of the year after the general election.
- 5) You ask the Board whether the costs of such a party would be a noncampaign disbursement under Minnesota Statutes, chapter 10A, so that you may use principal campaign committee funds to pay those costs.

ISSUE

May the costs of a party at the end of a candidate's service in public office, given to thank staff and others who have assisted in the official's public service, be paid for with campaign funds as a noncampaign disbursement?

OPINION

The candidate's principal campaign committee may use its funds to pay for a single party, in an election year, after the general election, when the candidate will no longer seek election to the office held.

In reaching this conclusion, the Board first considered whether the request fell within an existing noncampaign disbursement category and concluded that it did not.

The party you describe does not fit the noncampaign disbursement for expenses of the candidate for serving in office provided in Minn. Stat. § 10A.01, subd. 10c(j). The Board has generally limited use of this noncampaign disbursement to costs that directly assist the official in the continuing performance of public service, that enhance the official's ability to serve, and that would not be incurred if the official were not serving in office.

The party under consideration is not a party given in a general election year when a candidate's name will no longer appear on a ballot or the general election is concluded, as provided for in Minn. Stat. § 10A.01, subd. 10c(m). Use of this noncampaign disbursement is limited to candidates whose names appeared on the primary and/or general election ballots in the election year during which the party is given.

The Board notes that the party you propose is related in some ways to your service in office, although it does not have the direct relation to continued and improved service that the Board has recognized as sufficient for application of Minn. Stat. § 10A.02, subd. 10c(j). The party also bears many similarities to the post election party authorized by Minn. Stat. § 10A.01, subd. 10c(m), although it does not completely fall within the 10c(m) definition.

The Board has authority under Minn. Stat. § 10A.01, subd. 10c(s), to recognize payments not specifically listed in the statute as valid noncampaign disbursements and does so in this matter.

Your principal campaign committee may use its funds to pay for the party you describe. This opinion is based on the Board's understanding that principal campaign committee funds will be used for a single party, to be given in 1998, after the general election. This opinion is further based on the fact that 1998 is an election year for the office you hold and that your name would be on the ballot for that election if you had not decided to retire from this public office at the end of your current term.

Issued: _____

G. Barry Anderson, Chair
Campaign Finance and Public Disclosure Board

CITED STATUTES

10A.01 DEFINITIONS

Subd. 10. **Campaign expenditure.** "Campaign expenditure" or "expenditure" means a purchase or payment of money or anything of value, or an advance of credit, made or incurred for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or defeating a ballot question.

Subd. 10c. **Noncampaign disbursement.** "Noncampaign disbursement" means a purchase or payment of money or anything of value made, or an advance of credit incurred, by a political committee, political fund, or principal campaign committee for any of the following purposes:

(j) payment by a principal campaign committee of the candidate's expenses for serving in public office, other than for personal uses;

(m) costs of a postelection party during the election year when a candidate's name will no longer appear on a ballot or the general election is concluded, whichever occurs first;

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

**Findings and Order in the Matter of a Contribution to the 8th Congressional District DFL
Committee from the Klun Law Firm**

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 the 2011 Report of Receipts and Expenditures filed with the Board, the 8th Congressional District DFL Committee disclosed receipt of a contribution on February 28, 2011, in the amount of \$150 from Klun Law Firm, 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 response to a Board inquiry, Cathy Daniels, treasurer of the 8th Congressional District DFL stated, "The check from...Klun Law Firm was for 3 - \$50.00 dinner tickets to the Oberstar appreciation dinner on February 28, 2011 at the Duluth DEC."

On February 28, 2012, Kelly Klun responded that the law firm issued a check for a tribute dinner to Jim Oberstar. She states, "I misunderstood that these fees were for a fundraiser, and not fees associated with attending the dinner." On March 2, 2012, Ms. Klun submitted a check for \$50 to be applied toward an anticipated civil penalty.

Board records show that the 8th Congressional District DFL Committee has been issued findings for four previous violations of Minnesota Statutes, section 10A.27, subdivision 13. The first violation occurred in 2006, two violations occurred in 2007, and a further violation occurred in 2008.

This matter was considered by the Board in executive session on April 3, 2012. The Board's decision is based on the correspondence received from Cathy Daniels and Kelly Klun and on Board records.

Board Analysis

Purchasing a ticket to a fundraiser is a contribution to the organization holding the event. Tickets to fundraising events are classified and reported as contributions under Minnesota Statutes, section 10A.20, subdivision 3(b).

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 8th Congressional District DFL 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 Klun Law Firm 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 8th Congressional District DFL Committee or the Klun Law Firm 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 \$200, four times the amount by which the contribution exceeded \$100, on the 8th Congressional District DFL for accepting and depositing a contribution from an unregistered association without the disclosure required by Minnesota Statutes, section 10A.27, subdivision 13. The amount of the penalty recognizes that the 8th Congressional District DFL has violated this provision in three other years.
2. The 8th Congressional District DFL 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 8th Congressional District DFL is directed to refund \$50 to the Klun Law Firm and forward to the Board a copy of the check used to return the excess contribution within thirty days of receipt of this order.
4. The Board imposes a civil penalty of \$50 on the Klun Law Firm for making a contribution in excess of \$100 to a party unit without the disclosure required by Minnesota Statutes, section 10A.27, subdivision 13 (b). The payment by the Klun Law Firm submitted to the Board on March 2, 2012, shall be, and hereby is, applied in satisfaction of this civil penalty.
5. If the 8th Congressional District DFL 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: April 3, 2012

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 Steven Timmer Regarding
Representative Ernest Leidiger and Steven Nielsen**

The Allegations in the Complaint

On March 2, 2012, Steven Timmer filed a complaint and an amendment with the Campaign Finance and Public Disclosure Board. The complaint alleges that Representative Ernest Leidiger and Steven Nielsen, the treasurer of the Citizens for Leidiger committee, violated the provisions in Minnesota statutes and rules requiring principal campaign committee expenditures to be described correctly and fully on reports to the Board.

The complaint specifically cites a \$178 noncampaign disbursement listed on the Citizens for Leidiger 2011 year-end Report of Receipts and Expenditures. The year-end report states that this payment was made to Hennepin County for “[t]ransportation.” The \$178 payment, however, actually was made to pay the fine for a speeding ticket that Representative Leidiger received in March, 2011. The complaint maintains that a traffic ticket fine is not an allowable noncampaign disbursement. The complaint also argues that by labeling this payment as a transportation expense, Representative Leidiger and Mr. Nielsen violated the statutes and rules requiring noncampaign disbursements to be accurately described on reports to the Board.

The complaint claims that calling the fine a transportation expense was a “knowing attempt to deceive the Board, and by extension the public, by both Rep. Leidiger and Mr. Nielsen.” It is a violation of Minnesota Statutes, section 10A.025, subdivision 2, for a treasurer to sign and certify as true a report with the knowledge that the report contains false information or with the knowledge that the report omits required information. The Board investigated this aspect of the complaint as a potential violation of the prohibition on filing a report with the knowledge that it does not include all required information.

The Response to the Complaint

Mr. Nielsen signed the 2011 year-end Report of Receipts and Expenditures for the Citizens for Leidiger committee and certified that report as true. The instructions for the noncampaign disbursement schedule state that the report must include the “specific purpose of the disbursement.” In an interview with staff, Mr. Nielsen acknowledged that when he certified the 2011 report, he was aware of this requirement.

In late February, various internet sites noted the transaction that is the subject of this investigation and indicated that the payment appeared to be for a speeding ticket. On March 2, 2012, just hours before the complaint in this matter was filed, Mr. Nielsen filed an amendment to the committee's year-end report. Mr. Nielsen subsequently submitted a letter in response to the complaint and gave a statement to Board staff.

The responses to the complaint show that Representative Leidiger was on his way home from a late session of the legislature when he received a speeding ticket. Representative Leidiger therefore rationalized that the fine could be characterized as an expense for serving in public office, which is an allowed noncampaign disbursement. Although Mr. Nielsen did not initially agree with Representative Leidiger, Representative Leidiger ultimately persuaded Mr. Nielsen that this characterization was justified.

Representative Leidiger and Mr. Nielsen then discussed how to describe the payment on the year-end report. According to Mr. Nielsen's statement, Representative Leidiger did not want to call the payment a speeding ticket because he did not want to draw attention to the fact that he had paid this expense with campaign funds. Representative Leidiger eventually convinced Mr. Nielsen that they should use the word "transportation" to describe the payment on the year-end report.

Mr. Nielsen states that, in hindsight, it was poor judgment to call the expense "transportation." But Mr. Nielsen argues that the year-end report itself shows that there was no intent to deceive anyone because the report correctly identifies the payee as Hennepin County and lists the court's address. Mr. Nielsen also claims that because he and Representative Leidiger believed that the fine was a legitimate noncampaign disbursement under the law, they could not have had any intent to deceive. Finally, Mr. Nielsen points out that Representative Leidiger subsequently reimbursed the committee for the expense.

Board Analysis

The Board has the authority to investigate all reports filed with it under Minnesota Statutes, Chapter 10A. When the Board accepts a complaint, it exercises that authority to investigate all possible violations of Chapter 10A that might arise from the conduct alleged in the complaint or from the reports under review regardless of whether the complainant clearly and specifically raised those violations in the complaint.

Here, the facts alleged in the complaint raise three issues. First, whether the fine for the speeding ticket was accurately and specifically described on the committee's year-end report; second, whether the transaction was properly categorized as a noncampaign disbursement; and, third, whether Mr. Nielsen signed the year-end report knowing that it omitted required information.

The purpose of Minnesota Statutes, Chapter 10A, is to promote accurate disclosure of a principal campaign committee's financial transactions so that the public can know how the committee is spending its funds. To further this goal, Minnesota Statutes, section 10A.20, subdivision 3, clauses (g) and (l), require a principal campaign committee to describe the purpose of every campaign expenditure and noncampaign disbursement in excess of \$100 on the reports of receipts and expenditures that it files with the Board. Minnesota Rules, part 4503.0900, requires that the report include sufficient information to justify classifying a transaction as a noncampaign

disbursement. Minnesota Rules, part 4503.1800, requires that expenditures include "a description of the service or item purchased."

The description of an expenditure must be accurate and must be specific enough to allow citizens to understand what was actually purchased with the money.

In the present case, the Citizens for Leidiger year-end report stated that the purpose of the \$178 expenditure was "transportation." This description violates the rule that transactions include a description of the service or item purchased. The committee did not purchase transportation or transportation services from Hennepin County. Reporting the transaction as being for "transportation" also violates the rule that for a noncampaign disbursement, the description must include sufficient information to justify the classification. In general, costs of transportation are not noncampaign disbursements.

Finally, the description is insufficient to meet the core disclosure purposes of Chapter 10A because citizens would not interpret the description "transportation" to include payment of a fine for a speeding ticket. Identifying the payee as Hennepin County did not help to clarify that the expense was a speeding ticket fine. As a result of this analysis, the Board concludes that the evidence supports a finding of probable cause that the Citizens for Leidiger year-end report did not sufficiently and accurately describe the purpose of the \$178 expenditure.

With regard to the second issue, Mr. Nielsen states that the committee "did some rationalizing" and concluded that the cost of the speeding ticket could be classified as a noncampaign disbursement for costs of serving in office because Representative Leidiger was on the way home from a late session when he got the ticket.

Minnesota Statutes, section 10A.01, subdivision 26, clause (10), provides that noncampaign disbursements include payments made by a principal campaign committee for the candidate's expenses for serving in public office. In its advisory opinions, the Board has clarified that these expenses are limited to the ordinary and reasonable costs associated with activities that are expected or required of a public official. See, e.g., Advisory Opinions 314, 411. A speeding ticket is not an activity expected or required of a public official. Payment of a candidate's fine for a speeding ticket therefore is not an expense for serving in public office and, thus, not a noncampaign disbursement. Consequently, there is probable cause to find that Citizens for Leidiger improperly reported the \$178 payment for the fine as a noncampaign disbursement.

A principal campaign committee can remedy violations of the statutory reporting requirements by amending its report. Here, Mr. Nielsen amended the Citizens for Leidiger report to disclose the true purpose of the \$178 expenditure. The Board concludes that the committee also resolved the issue of whether it improperly reported the payment as a noncampaign disbursement by implicitly acknowledging that that characterization was incorrect. The Board accepts the committee's March 2 amendment as re-classifying the transaction as a campaign expenditure. The fact that Representative Leidiger has reimbursed the committee for the expense does not change its reporting characterization. When a committee remedies a

reporting violation related to descriptions or classifications, the statutes do not provide for a civil penalty.

While the Board has jurisdiction over the use of campaign committee money for noncampaign disbursements, once an expense is classified as a campaign expenditure, it is governed by Chapter 211B, which is not under the Board's jurisdiction. Thus, the Board has no jurisdiction to determine whether payment of a speeding ticket fine is a proper use of campaign money and will not make any finding in that regard.

The final issue raised by the complaint is whether Mr. Nielsen signed the Citizens for Leidiger year-end report knowing that it omitted required information. Minnesota Statutes, section 10A.025, subdivision 2, states that anyone who signs and certifies a report as true knowing that it contains false information or who knowingly omits required information is subject to a civil penalty of up to \$3,000 and to possible criminal charges.

The standard for finding that an individual knowingly filed a false or incomplete report is higher than establishing that a report was inaccurate. To determine whether an individual knowingly filed a false or incomplete report, the Board first looks for evidence that the individual was aware of the transactions in question and, second, that the individual certified the report knowing that the report omitted or incorrectly stated the transactions.

Here, when Mr. Nielsen signed the 2011 year-end report, he knew that the \$178 payment was for a speeding ticket fine. He was also aware of the requirement that the report must include a specific statement of the purpose of a noncampaign disbursement transaction. With that knowledge, Mr. Nielsen nevertheless listed the transaction as being for "transportation." In fact, Mr. Nielsen acknowledges that he and Representative Leidiger discussed how to describe the transaction. In his amendment, Mr. Nielsen states that "[a]t the time it just did not seem right to call it a speeding ticket." In an interview with Board staff, Mr. Nielsen acknowledged that Representative Leidiger did not want to report the transaction as being for a speeding ticket fine because he did not want to point that fact out to the public. Although they debated the point, the treasurer ultimately accepted the candidate's position resulting in the vague and inaccurate description on the year-end report.

Minnesota Rules, part 4503.0200, subpart 2, provides that the candidate is ultimately responsible for the principal campaign committee's compliance with Chapter 10A. Minnesota Statutes, section 10A.025, subdivision 2, however, provides false certification penalties only against the person who actually signed the committee report. Consequently, although Representative Leidiger made the decision here to characterize the fine as a transportation expense, the campaign finance laws provide no penalty for his acts.

In this matter, the treasurer, at the candidate's urging, intentionally omitted details and provided a camouflaged description of an expenditure so that the public would not easily recognize the actual purpose of the transaction. The facts mandate a finding that this course of conduct constitutes a violation of Minnesota Statutes, section 10A.025, subdivision 2.

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 believe that the Citizens for Leidiger 2011 year-end Report of Receipts and Expenditures did not accurately or specifically state the purpose of the \$178 payment to Hennepin County. However, a specific description was provided by amendment and no violation remains.
2. There is probably cause to believe that the Citizens for Leidiger 2011 year-end Report of Receipts and Expenditures improperly reported the \$178 payment to Hennepin County as a noncampaign disbursement. However, the Board accepts the committee's amendment as re-classifying the transaction as a campaign expenditure and no violation remains.
3. There is probable cause to believe that when Steven Nielsen certified the Citizens for Leidiger 2011 year-end report, he did so knowing that it omitted required information.

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

ORDER

Within 30 days of the date of this order, Steven Nielsen must pay a civil penalty of \$300 for knowingly certifying as true a report that omitted required information by sending or delivering to the Board a check payable to the State of Minnesota.

Dated: April 3, 2012

Greg McCullough, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes

Minn. Stat. § 10A.20, subd. 3. Contents of report. (g) The report must disclose the name and address of each individual or association to whom aggregate expenditures, including approved expenditures, have been made by or on behalf of the reporting entity within the year in excess of \$100, together with the amount, date, and purpose of each expenditure and the name and address of, and office sought by, each candidate on whose behalf the expenditure was made, identification of the ballot question that the expenditure was intended to promote or defeat, and in the case of independent expenditures made in opposition to a candidate, the candidate's name, address, and office sought. A reporting entity making an expenditure on behalf of more than one candidate for state or legislative office must allocate the expenditure among the candidates on a reasonable cost basis and report the allocation for each candidate.

....

(l) The report must disclose the name and address of each individual or association to whom noncampaign disbursements have been made that aggregate in excess of \$100 within the year by or on behalf of the reporting entity and the amount, date, and purpose of each noncampaign disbursement.

Minn. Stat. § 10A.025 Subd. 2. Penalty for false statements. A report or statement required to be filed under this chapter must be signed and certified as true by the individual required to file the report. The signature may be an electronic signature consisting of a password assigned by the board. An individual who signs and certifies to be true a report or statement knowing it contains false information or who knowingly omits required information is guilty of a gross misdemeanor and subject to a civil penalty imposed by the board of up to \$3,000.

Minn. R. 9503.0900, subp. 3. Reporting purpose of noncampaign disbursements. Itemization of an expense which is classified as a noncampaign disbursement must include sufficient information to justify the classification.

Minn. R. 9503.1800, subp. 2. Expenditures and noncampaign disbursements. Legislative, statewide, and judicial candidates, party units, political committees and funds, and committees to promote or defeat a ballot question must itemize expenditures and noncampaign disbursements that in aggregate exceed \$100 in a calendar year on reports submitted to the board. The itemization must include the date on which the committee made or became obligated to make the expenditure or disbursement, the name and address of the vendor that provided the service or item purchased, and a description of the service or item purchased. Expenditures and noncampaign disbursements must be listed on the report alphabetically by vendor.

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

**Findings and Order in the Matter of the Complaint
by Mark Ward regarding Daniel Schleck, the Coalition for Sensible Siting,
Carol Overland, and Goodhue Wind Truth**

Allegations of the Complaint

On December 8, 2011, the Campaign Finance and Public Disclosure Board (the Board) received a complaint from Mark Ward regarding Carol Overland and Daniel Schleck. Mr. Ward alleged that Ms. Overland had failed to register as a lobbyist on behalf of Goodhue Wind Truth (GWT) and that Mr. Schleck had failed to register as a lobbyist on behalf of the Coalition for Sensible Siting (CSS). Individuals are required to register as a lobbyist with the Board within five days of being engaged for pay of more than \$3,000 for lobbying activities. Failure to comply with this requirement is a violation of Minnesota Statutes section 10A.03.

In the complaint Mr. Ward states, "Mr. Schleck and Ms. Overland represent parties before the Minnesota Public Utilities Commission lobbying against the certificate of need and site permit applications of AWA Goodhue, LLC for a 78 megawatt wind project in Goodhue County, Minnesota. In connection with these lobbying activities Mr. Schleck and Ms. Overland participated in public hearings and a contested case proceeding, including preparing and filing testimony, briefs and other filings and appearing before the Minnesota Public Utilities Commission."

In support of his complaint Mr. Ward provides copies of documents filed with the Minnesota Public Utilities Commission (PUC) by Ms. Overland on behalf of GWT and by Mr. Schleck on behalf of CSS. The documents include Petitions for Intervention that request recognition of GWT and CSS as a full party to the certificate of need (CN 09-1186) and site (WS 08-1233) dockets under consideration by the PUC. Mr. Ward also provides copies of notices of appearance by Ms. Overland and Mr. Schleck that were submitted to the PUC and to administrative law judges conducting hearings on behalf of the PUC. Mr. Ward also notes that GWT and CSS appear to have participated in other dockets before the PUC, including one dealing with the health effects of wind turbines and a second referred to as the "Bent Tree Project."

Mr. Ward also submits pages from the GWT website (www.goodhuewindtruth.com) and from the CSS website (www.coalitionforsensiblesiting.com) in support of his complaint. According to Mr. Ward, the content of the pages show that "CSS is the fundraising arm for both organizations. GWT's website also states that the organizations have raised over \$100,000 to date to pay for legal fees and other lobbying efforts at local, state and federal levels attempting to fight the AWA Goodhue wind project...." Mr. Ward concludes: "Based on the information provided on the organizations' websites, it is evident that Mr. Schleck and Ms. Overland have been paid more than \$3,000 for their lobbying activities, and, accordingly, should have registered as lobbyists under Minn. Stat. § 10A.03."

The complaint is further supplemented by a copy of an affidavit submitted by Marie McNamara to the PUC which states that Marie and Bruce McNamara founded GWT and maintain a website for GWT. Additionally, the complainant provides a copy of an affidavit by Steve Groth that states that he is the founder of CSS and that CSS maintains a website. Based on this and on information on the GWT and CSS websites, Mr. Ward states, "Given the amount of money raised in this lobbying effort, the Campaign Finance Board should also investigate whether any members for the

Coalition for Sensible Siting or Goodhue Wind Truth should also be registered as lobbyists as individuals who have spent more than \$250 in any year for the purpose of attempting to influence legislative or administrative action in connection with the AWA Goodhue wind project.” Although it is not specifically mentioned in Mr. Ward’s complaint, a finding by the Board that Ms. Overland and Mr. Schleck are required to register as lobbyists would, by extension, result in violations of the provisions of Chapter 10A by GWT and CSS. An association that spends more than \$500 to be represented by a lobbyist or at least \$50,000 in any calendar year on efforts to influence legislative and/or administrative action is a “principal” under Minnesota Statutes section 10A.01, subdivision 33. A principal is required to file an annual report disclosing the association’s total expenditures to influence legislative and/or administrative action during the prior year. A principal that fails to file the annual report is in violation of Minnesota Statutes section 10A.04, subdivision 6. Therefore, if the allegation that Ms. Overland and Mr. Schleck were required to register as lobbyists is correct, then CSS and GWT were required to file annual reports with the Board.

The Board notified Ms. Overland and Mr. Schleck of the complaint on December 14, 2011. Board staff asked both Ms. Overland and Mr. Schleck specific questions on their duties for GWT and CSS respectively. Although the complaint jointly lists Ms. Overland and Mr. Schleck, and alleges at least a financial relationship between GWT and CSS, the Board investigation proceeded under the premise that the responses of Ms. Overland and Mr. Schleck are separate and may lead to different findings for each individual.

Background Information

Ms. Overland’s and Mr. Schleck’s responses to the complaint contain specific statutory and technical arguments explaining their actions before the PUC. Before reviewing the responses, the Board believes that some context for the statutory intersection between the lobbying registration requirements of Chapter 10A and the authority of the PUC is necessary. Additionally, the specific record for the AWA Goodhue, LLC, site permit and certificate of need requests provides background for the Board’s consideration of the complaint.

If an individual or association attempts to influence one of three types of governmental action, the individual or association may be required to register as a lobbyist. The three types of governmental action are legislative action, the actions of a metropolitan governmental unit, and “administrative action.” The definition of administrative action is provided in Minnesota Statutes section 10A.01, subdivision 2, which states:

"Administrative action" means an action by any official, board, commission or agency of the executive branch to adopt, amend, or repeal a rule under chapter 14. "Administrative action" does not include the application or administration of an adopted rule, except in cases of rate setting, power plant and powerline siting, and granting of certificates of need under section 216B.243.

It is necessary to review the statutory framework within which the PUC operates because Mr. Schleck argues, in his response to the complaint, that the siting application submitted by AWA Goodhue, LLC is not a power plant siting under Minnesota Statutes section 10A.01, subdivision 2.

The PUC is the state commission responsible for issuing power plant and powerline siting permits and for granting certificates of need under Minnesota Statutes section 216B.243. Both a certificate of need and a site permit are generally required before the construction of a large

energy facility may begin. A large energy facility is any facility with an intended capacity of 50,000 or more kilowatts.

In the application for a certificate of need the applicant demonstrates that there is a need for the facility. The PUC issues the certificate of need if it determines that the proposed facility will be in the public interest.

In the application for a site permit, the applicant specifies the design, location, and operation of the proposed facility. The PUC is authorized to issue site permits by Minnesota Statutes, Chapters 216E and 216F. Chapter 216E is cited as the Minnesota Power Plant Siting Act and is used to issue a site permit for a large energy facility. A separate siting authority is provided in Chapter 216F for the construction of a large wind energy conversion system (LWECS).

To qualify as a LWECS the wind energy generated by the project must be 5,000 or more kilowatts. Although generally governed by Chapter 216F, a site permit application for a LWECS is in part regulated by the provisions of Chapter 216E. Minnesota Statutes section 216F.02 incorporates sections of Chapter 216E through the following provision:

(a) The requirements of chapter 216E do not apply to the siting of LWECS, except for sections 216E.01; 216E.03, subdivision 7; 216E.08; 216E.11; 216E.12; 216E.14; 216E.15; 216E.17; and 216E.18, subdivision 3, which do apply.

The processes used by the PUC for application and review of a certificate of need or a site permit provide for significant and meaningful public participation. Public notice is given to individuals living near the proposed energy facility of the certificate of need and site permits. The public is encouraged to provide comment, and a specific PUC staff member is assigned to receive and document input regarding the applications before the PUC.

Individuals who provide comments on a certificate of need application or a site permit are attempting to influence the administrative action of the PUC. Not every individual who responds to the request for comments, however, is required to register as a lobbyist. The requirement to register as a lobbyist is triggered only if compensation and/or expenditure thresholds are reached. An individual who is paid more than \$3,000 from all sources in a year for attempting to influence one of the three types of governmental action explained above must register as a lobbyist for all of the associations represented. An individual who is not compensated but who spends more than \$250 of their personal funds in a year, not including the individual's own traveling expenses or any membership dues, attempting to influence one of the three types of governmental action is also required to register as a lobbyist.

AWA Goodhue Wind, LLC

As specified in the complaint, Mr. Ward believes that Ms. Overland and Mr. Schleck were lobbying to influence the PUC decisions on the site permit (PUC docket number WS 08-1233) and certificate of need (PUC docket number CN 09-1186) requested by AWA Goodhue Wind, LLC. The project, commonly referred to as the Goodhue Wind Project, proposes placement of approximately fifty wind turbines in Goodhue County. The projected power generated by the project is over 50,000 kilowatts. Under the definitions provided in Chapters 216B and 216F, the AWA Goodhue Wind project is both a large energy facility that will require a certificate of need under Minnesota Statutes section 216B.243, and a LWECS that will require a site permit under Minnesota Statutes section 216F.04.

The initial request for a LWECS site permit for the Goodhue Wind Project was filed with the PUC on October 24, 2008. A certificate of need was not requested for the project under the belief that a LWECS project does not require a certificate of need. However, on October 15, 2009, a certificate of need application was submitted for the Goodhue Wind Project. This was followed on November 30, 2009, by an order issued by the PUC that stated that a certificate of need is required for the project because it would meet the definition of a large energy facility.

The site permit and certificate of need applications for the Goodhue Wind project is clearly controversial. To facilitate public comment, the PUC requested that the Office of Administrative Hearings (OAH) conduct public hearings on July 21st and 22nd, 2010. Although these opportunities for the public to provide comments were conducted as public hearings for the certification of need docket, the scope of the hearing was expanded to allow for public comment on siting issues as well.

Under certain circumstances, the LWECS siting process in Chapter 216F allows a county to develop standards for the siting of a LWECS within the county's borders. The PUC is required to apply more stringent county standards to a LWECS permit unless the PUC finds good cause not to use the more stringent standards. On October 5, 2010, the Goodhue County Board of Commissioners adopted more stringent standards for the placement of wind turbines than those used by the PUC in evaluating a LWECS site permit. The PUC referred the issue of the Goodhue County standards to the OAH for a contested case hearing on November 2, 2010. One purpose of the contested case hearing was to develop a record that the PUC could use to determine whether there was good cause not to apply the Goodhue County standards. The contested case hearing was held from March 15th to 17th, 2011. The administrative law judge who conducted the hearing issued her findings on April 29, 2011. Based on the findings, the PUC concluded that there was good cause to disregard the Goodhue County standards, and it issued a site permit for the Goodhue Wind Project on August 23, 2011.

The issuance of the site permit did not end the PUC's consideration of the Goodhue Wind Project. Motions for reconsideration have been filed with the PUC, and issues related to the impact of the project on wildlife are still under consideration. As late as February 22, 2012, the PUC held a meeting at which it considered both the site permit and certificate of need dockets for the Goodhue Wind Project.

With this background in mind, the Board considered the following responses of Ms. Overland and Mr. Schleck.

Response of Carol Overland

Ms. Overland responded to the complaint by letter dated January 20, 2012, stating that she is the attorney for GWT and that GWT consists of Bruce and Marie McNamara. Ms. Overland described the services she provides GWT by stating the following:

My duties include advising GWT in their opposition to the AWA Goodhue Wind Project, and in helping them inform this record and contribute to the work of others in similar situations. This includes helping in general information gathering, and drafting of pleadings and testimony, assembling exhibits, and writing briefs. Some of this work is strictly "legal representation" and some of this work is basic grassroots advocacy training in utilizing options for public participation within the administrative, legal, media, and legislative venues.

Board staff asked Ms. Overland about the two Petitions for Intervention she submitted on behalf of GWT and which were included with the complaint. In reference to the petition submitted in February of 2010, Ms. Overland responds:

The Petition for Intervention is for four dockets, two of which are subject to Minn. Stat. §10A.03, subdivision 1, as a Certificate of Need (CoN) docket (09-1186) and a Siting docket (08-1233). The other two dockets are Power Purchase Agreement dockets, 09-1349 and 09-1350, which are not subject to 10A.03, subdivision 1. It is my understanding that the lobbying statute applies to CoN and Siting dockets whether or not I'm representing an admitted party – its focus is on representation of a party, whether a "party" or a "participant" and that the issue is the type of docket, not whether or not we are an intervening party. Regarding participation in the AWA Goodhue dockets, a list of dates appearing before an ALJ or the Commission isn't reflective of "participation" and is only the tip of the iceberg. A Public Comment Hearing for CoN and Siting dockets was held July 21 and 22, 2010, and an evidentiary hearing was held April 15-18, 2011; Commission meetings have been held regularly over the last 4 years, the next one was just noticed for February 2, 2012 for review of AWA Goodhue's Avian and Bat Protection Plan.

Later in her response Ms. Overland refers to the second Petition for Intervention and states:

The Petition of October, 2010 is for only the Siting docket, 08-1233. A narrow aspect of this docket was referred by the Commission to OAH for a contested case. Because it was in a siting docket (08-1233) I am regarding that hearing within the docket as subject to the lobbying registration requirements (although a good faith argument could be made as to whether a contested case regarding applicability of Minn. Stat. §216F.081 is lobbying because it is a narrow sidebar to the siting of the project).

In response to a question on GWT actions before the PUC on other dockets unrelated to the Goodhue Wind Project, Ms. Overland states:

Regarding participation in various dockets – Public Health Impacts, and Bent Tree. GWT has actively participated in the Public Health Impacts of Wind Turbines docket at the PUC, and this is NOT a CoN or Siting docket and 10A is not applicable. As for Bent Tree, a siting docket before the PUC, I did not represent GWT in its participation in the Bent Tree docket. GWT principal Marie McNamara, ...attended to observe because the AWA Goodhue Wind Project was moving towards a similar hearing. Mrs. McNamara wanted to observe the process, discussed it with Bent Tree project opponents, attended the hearing, and made a 3 minute public comment. None of the 10A thresholds of participation or dollar amounts was reached in her participation.

In response to the complaint's allegation that CSS provided funding for GWT, Ms. Overland responded:

The Coalition for Sensible Siting was the source of funding for GWT in the amount of \$10,500.00, from February, 2011 through mid-September, 2011, at which time a payment was made, a billed balance of \$4,317.50 was outstanding and which remains unpaid. CSS has not made any payments since that time and has stated it will make no further payment. All funds billed and received was for Certificate of Need and Siting docket work, and subject to the 10A requirements. GWT is proceeding with funding from its principals, Bruce and Marie McNamara.

In response to a Board staff question on the GWT website referenced in the complaint Ms. Overland explains her relationship to the site as follows:

No, neither I nor Overland Law Office were paid to create and/or maintain the GWT website. That is the full responsibility of GWT, and I and Overland Law Office have nothing to do with it. Further, operating a website is not lobbying under 10A, and this question is not relevant to this investigation.

In response to questions on whether GWT and CSS provided compensation, and if so, the amount of compensation received by calendar year, Ms. Overland provides:

Yes, as above, Carol A. Overland and/or Overland Law Office was paid for services by GWT and Coalition for Sensible Siting. ...The amount paid for GWT representation before the PUC in the AWA Goodhue Certificate of Need (09-1186) and Siting (08-1233) dockets in 2011 was \$12,000.00, \$10,500.00 of which was paid by CSS, the balance by the McNamaras. The amount paid in 2010 was \$4,245.00 – half of which was for assistance in 09-845, which is not lobbying.

Ms. Overland has been registered as a lobbyist in the past. From November 15, 2002, to May 28, 2003, Ms. Overland was registered as the lobbyist for Public Interveners Network, an association that appeared before the PUC on a powerline siting docket that was unrelated to the Goodhue Wind Project. When asked to compare her representation of the Public Interveners Network with her work for GWT, Ms. Overland responded that:

In respect to whether my work for Goodhue Wind Truth is, like Public Interveners Network, similarly subject to 10A, my understanding is that yes, the CoN and Siting work would be deemed lobbying and is subject to the registration and reporting requirements of 10A.

The PUC maintains a searchable website of all documents submitted for any docket before the commission. Along with her response, Ms. Overland provided a printed list from the PUC website of documents submitted by GWT for the Goodhue Wind Power site permit and certificate of need dockets. By board count GWT submitted 130 documents for the site permit docket and 79 documents for the certificate of need docket. Board staff did not examine every document, but some of the GWT submissions to the PUC were not submitted by Ms. Overland, and some documents appear as submissions to both dockets.

In a telephone conversation with staff Ms. Overland offered to register as a lobbyist on behalf of GWT and to provide lobbyist disbursement reports retroactive to 2011. Staff advised Ms. Overland to defer registration and reporting until questions raised by Mr. Schleck on the inclusion of the site permit docket as administrative action had been resolved by the Board.

Response of Daniel Schleck

Mr. Schleck responded to the complaint by letter dated January 23, 2012. In response to a question on his relationship to CSS, Mr. Schleck states:

I have not been retained by CSS. My client is Mr. Steve Groth and he works with the CSS on its matters and in some cases asks me to assist them. With respect to a description of the specific work done for Mr. Groth or the CSS, the details of my discussion are protected as attorney client privileged communications and as such I can't disclose the specifics of this work. However, given the public documents presented with the complaint it is clear that I have intervened on behalf of CSS in MPUC docket IP/WSW-08-1233.

In response to a question on the representation he provided to CSS on dockets before the PUC Mr. Schleck states that:

There were various hearings associated with MPUC Docket 08-1233 that CSS and individuals supporting CSS participated in, including:

1. March 15, 2010 – Testimony on Site Permit
2. October 21, 2010 – Testimony on Site Permit
3. November 23, 2010 – Testimony on Site Permit
4. March 15-17, 2011 Evidentiary Hearings – Evidentiary Issues for Contested Case Hearing
5. June 30, 2011 – Testimony on Granting Site Permit

With respect to the Bent Tree Docket, individuals whose interests are aligned with CSS and who share information, conduct research and support the goals of CSS participated with testimony for this particular project. I personally never appeared in any capacity on behalf of CSS for any hearing for the Bent Tree docket. It was my understanding from my client Mr. Groth, that these individuals represented that they were participating in the Bent Tree Docket on behalf of CSS and other organizations.

Mr. Schleck compared his representation of CSS to the administrative action definition in Minnesota Statutes section 10A.01, subdivision 2, and states:

MPUC Docket 08-1233 deals with the site permit for a Large Wind Energy Conversion System o[r] “LWEC” which is regulated pursuant to Minnesota Statute Section 216F.01, *et.al.* Nowhere in Minn. Stat. 216F are the terms “power plant” or “powerline” used or defined with respect to administrative actions or lobbying. As such, it is unclear that a project for which the MPUC is conducting hearings on any of the activities conducted within MPUC Docket 08-1233 is an “Administrative action” as defined in Minnesota Statute 10A.01.

In response to a question on compensation received for attempting to influence administrative action, Mr. Schleck states:

Given this apparent confusing definition within the statutes, at this point, I would have to say that I did not receive more than \$3,000 for lobbying for CSS in any year, but would reserve the right to modify this response if (the) Minnesota Campaign Finance and Public Disclosure Board clarifies its question regarding its interpretation of Minn. Stat. 10A.

The board asked Mr. Schleck additional questions by letter dated January 26, 2012. Staff noted that in his first response Mr. Schleck only acknowledged representation of CSS for the siting permit docket of the Goodhue Wind Project. Staff asked Mr. Schleck to explain this position given that the Petition of Intervention by CSS requested status as a full party to both the siting permit and the certificate of need dockets. Staff also noted that in the Petition of Intervention, one of the rationales provided to accept CSS as a full party to the dockets was that CSS had already been actively participating in the Goodhue Wind Project certificate of need process. In response, Mr. Schleck states:

The Coalition for Sensible Siting was not formed with the Minnesota Secretary of State until November 10, 2010. The Petition for Intervention was not filed with the Minnesota Public Utilities Commission (“PUC”) until November 12, 2010 (the “Petition”). Additionally, without trying to “split hairs,” the Petition states that members of CSS, not CSS itself had previously participated in the Certificate of Need Docket.

Secondly, when the decision to intervene was initially contemplated, it was unclear whether the Certificate of Need or the Siting docket (PUC Docket 08-1233) was at issue before the PUC. As the matter developed, it is clear from the record of the Siting docket, that the controversy and testimony of CSS related to the Siting docket. Therefore, the proper conclusion with respect to all the facts taken into account is that CSS participated in the Siting docket and did not significantly participate in the Certificate of Need docket for the AWA Project.

Staff requested that Mr. Schleck provide the legal and factual basis for his position that the site permit for a LWECC under Chapter 216F is not an administrative action. In response Mr. Schleck states,

While it is true that Minn. Stat. 216F.02 provides that the definitions found in Minn. Stat 216E.01 apply to Minn. Stat. 216F, no further guidance on the interaction of 216E and 216F was given by legislature or any other administrative agency. Clearly siting of coal fired, nuclear or hydroelectric power plant involve very different issues from a LWECCs. There are no administrative rules from either the PUC or this body that specifically clarify that 216E.01 applies to LWECCs.

From the PUC list of documents submitted for the Goodhue Wind Project, the Board counts two documents from CSS in the certificate of need docket and eleven documents in the site permit docket.

Board Analysis

In determining the validity of the complaint the Board must determine the answers to two primary questions. First, were the activities of Ms. Overland on behalf of GWT and Mr. Schleck on behalf of CSS attempts to influence the administrative actions of the PUC? Second, if the first question is answered in the affirmative, was the compensation paid to Ms. Overland and Mr. Schleck sufficient to require registration as a lobbyist? After determining whether the activities on behalf of GWT and CSS are attempts to influence administrative actions, the Board will be able to address the secondary allegation of the complaint, namely that the individuals behind GWT and CSS spent sufficient personal funds to require their registration as lobbyists.

In determining whether the activities of Ms. Overland and Mr. Schleck were attempts to influence administrative action the Board will consider the Goodhue Wind Project siting docket and certificate of need docket separately.

Certificate of Need Docket 09-1186

Neither Ms. Overland nor Mr. Schleck disputes the PUC’s determination that the Goodhue Wind Project required a certificate of need under Minnesota Statutes section 216B.243, in order to proceed. The PUC reached this conclusion because the Goodhue Wind Project meets the definition of a “large energy facility.” A large energy facility is defined in Minnesota Statutes

section 216B.2421 as any electric power generating plant or combination of plants at a single site with a combined capacity of 50,000 kilowatts or more.

Neither Ms. Overland nor Mr. Schleck disputes the allegation that PUC actions regarding the granting of a certificate of need under section 216B.243 are “administrative action.” Therefore, any effort by Ms. Overland on behalf of GWT or by Mr. Schleck on behalf of CSS to influence the PUC decisions on the certificate of need docket constitutes an effort to influence administrative action.

Ms. Overland concedes that her efforts to influence the actions of the PUC on the certificate of need docket constituted lobbying under Chapter 10A. Mr. Schleck maintains that, despite the filing of a Petition for Intervention for the certificate of need docket, CSS “did not significantly participate in the Certificate of Need docket.”

Mr. Schleck’s attempt to exclude CSS actions on the certificate of need docket from the determination of whether he is required to register is unpersuasive. The statutes and administrative rules on lobbying exclude persons from the requirement to register as a lobbyist if the compensation received or the personal funds spent to influence administrative action is below certain thresholds. State law provides no exception based on the effectiveness of an action, the significance of an action, or the abandonment of an action. Mr. Schleck’s filings on behalf of CSS relative to the certificate of need docket for the Goodhue Wind Project were attempts to influence administrative action under Chapter 10A.

Site Permit Docket 08-1233

The responses of Ms. Overland and Mr. Schleck differ sharply on the question of whether PUC actions on the Goodhue Wind Project site permit docket are administrative actions under Chapter 10A. Ms. Overland’s response acknowledges that the PUC consideration of the site permit docket for the Goodhue Wind Project is an administrative action and therefore that attempts to influence the PUC actions on the docket constitute lobbying.

In both of his responses, Mr. Schleck contends that the definition of administrative action includes power plant and power line siting by the PUC but does not include the siting permit of a LWECS. In explaining this conclusion, Mr. Schleck relies on the fact that the site permit for a LWECS is provided for in Chapter 216F, while site permits for large energy facilities not powered by wind energy are provided for in Chapter 216E. Mr. Schleck also states that the phrase “power plant,” which is used in the definition of administrative action, is not found in Chapter 216F. Mr. Schleck contends this is evidence that the siting of an LWECS by the PUC is not an administrative action under Chapter 10A. Mr. Schleck further contends that the issues related to siting a power plant fueled by other types of energy are different than the issues related to the siting of a LWECS.

The Board considered Mr. Schleck’s position from both a statutory and a policy perspective. Mr. Schleck urges the Board to conclude that an LWECS is not a “power plant” because its siting is governed by Chapter 216F rather than Chapter 216E. The citation for Chapter 216E, contained in section 216E.001, provides that the Chapter shall be referred to as the Minnesota Power Plant Siting Act. Apparently on that basis, Mr. Schleck argues that only site permits under Chapter 216E constitute administrative actions under §10A.01, subdivision 2.

However, the requirements in Chapter 216F are not exclusive of the requirements in Chapter 216E. In Minnesota Statutes section 216F.02, the PUC is provided with a list of Chapter 216E

provisions that must be applied to a site permit for a LWECS. Among the list of provisions are all of the definitions in section 216E.01, which include the following:

Subd. 5: "Large electric power generating plant" shall mean electric power generating equipment and associated facilities designed for or capable of operation at a capacity of 50,000 kilowatts or more.

Subd. 9: "Site" means the location of a large electric power generating plant.

As reviewed earlier in this document, a certificate of need was required for the Goodhue Wind Project because, if developed, it will constitute a "large energy facility," which is defined as "any electric power generating plant or combination of plants at a single site with a combined capacity of 50,000 kilowatts or more..." Although this characterization of the project by the PUC was made in the context of the certificate of need application, the definition is substantially the same as that incorporated into Chapter 216F, under which an LWECS siting permit is sought.

The Board also finds it significant that when the legislature adopted Minnesota Statutes section 10A.01, subdivision 2, it included three PUC actions that could trigger lobbyist registration and reporting requirements: (1) rate setting, (2) power plant and power line siting, and (3) granting of certificates of need under section 216B.243. The legislature deliberately limited the certificate of need proceedings considered as administrative action to those brought under a specific statute. The legislature did not apply any statutory limit to the type of site permit applications which are to be considered administrative action. The Board finds no statutory basis on which to further limit the broad language of section 10A.02, subdivision 2, as it relates to power plant siting.

On a purely policy basis, it would seem just as important for the public to be informed about a LWECS as about a power generating facility driven by some other form of energy. While more traditional energy facilities give rise to different technical issues than a LWECS, the record of the Goodhue Wind Project dockets shows intense public participation and concern, which is common to the development of any large energy facility. The Board believes that the overriding purpose of the lobbying provisions of Chapter 10A is to provide public insight into the people and organizations that attempt to influence specified governmental actions and into the money spent on those attempts. The Board concludes that there is no policy basis to exclude a site permit for a LWECS from the definition of administrative action.

Based on this analysis, the Board concludes that the LWECS site permit docket 08-1223 is a power plant siting procedure for the purposes of Chapter 10A and that participation in that docket triggers lobbyist registration and reporting requirements if compensation or personal expenditure thresholds are met.

Compensation Received

In her response, Ms. Overland acknowledges receiving over \$3,000 in compensation for her lobbying on behalf of GWT in 2011. At that point in time, Ms. Overland should have registered as a lobbyist for GWT and submitted lobbyist disbursement reports. As an association that employed a lobbyist, GWT is now a "principal" under Chapter 10A and will be required to file an annual report for calendar year 2011 with a continuing reporting obligation for each year that the association employs a lobbyist. The Board notes that it agrees with Ms. Overland's statement that hearings conducted by the PUC on the health and safety effects of wind turbines are not administrative actions, and GWT costs related to those hearings should not be included in the reporting of lobbying disbursements.

Mr. Schleck did not respond to Board questions on the compensation paid for lobbying based on his belief that his actions on behalf of CSS did not constitute lobbying. The Board now directs Mr. Schleck to determine if CSS paid him more than \$3,000 in any year for his representation on either the site or certificate of need docket for the Goodhue Wind Project. Based on the PUC records and the evidence obtained in this investigation, there is probable cause to believe that Mr. Schleck received more than \$3,000 for his representation of CSS on the site and certificate of need docket. If Mr. Schleck disagrees with this finding, he may submit a request for reconsideration of the matter supported by appropriate and detailed evidence. Finding that Mr. Schleck did receive more than \$3,000 in compensation for his services, CSS is a principal under Chapter 10A.

The Board notes that the lobbyist disbursement reports that will be filed by Ms. Overland and Mr. Schleck must name any individual or association that provided over \$500 for the purpose of lobbying. From Ms. Overland's response, the Board expects that CSS and Marie and Bruce McNamara will be listed as sources of funding for GWT.

The penalty for failure to file as a lobbyist within the five day time frame for timely registration is contingent on the Board notifying an individual of the need to register, and then the individual ignoring the notification. Therefore, there are no statutory penalties for the tardiness of the retroactive registrations that will be required of Ms. Overland and Mr. Schleck.

Individual Members of GWT and CSS - Requirement to Register as a Lobbyist

Having determined that the efforts of CSS and GWT to influence the PUC actions on the Goodhue Wind Project site and certificate of need docket are lobbying, the Board now turns to the allegation that the individuals who make up GWT and CSS may also be required to register as lobbyists.

An individual who spends more than \$250 of their personal funds in a calendar year on lobbying, not including the individual's travel expenses to lobby or any membership fee to belong to an association that lobbies, is required to register as a lobbyist. In the case of this complaint, the question is whether Steve Groth, as the founder of CSS, or Marie and Bruce McNamara, as the founders of GWT, exceeded the \$250 limit.

The complaint provided copies of pages from the CSS and GWT websites as proof that the \$250 limit was exceeded. In her response, Ms. Overland stated that websites are not lobbying, and therefore questions on the website were not relevant. The complainants' allegation concerning the website and Ms. Overland's response are both inaccurate. The existence of a website that provides strong views on an issue is not a lobbying activity, but the cost of a website that urges others to communicate with public or local officials in an attempt to influence administrative action is an expenditure that would count towards the \$250 threshold for lobbyist registration.

The Board's examination of the CSS website did not locate any pages that contained a direct appeal to contact public or local officials. Website content may of course change, but the Board has no evidence that the CSS website urges others to communicate with public or local officials.

The Board's examination of the GWT website found four pages, including the home page, that urge others to communicate with public officials to influence action on the Goodhue Wind Project. The cost of the GWT website is therefore a lobbying expenditure that counts towards the \$250 threshold for registration.

The Board is aware that the cost of designing and hosting a website has declined over time and does not conclude that the website necessarily requires Marie and Bruce McNamara to register as lobbyists. The Board directs Marie and Bruce McNamara to determine their personal expenditures to design and host the GWT website. If the cost of the GWT website and the cost of any newspaper advertisement, purchased highway sign, or other lobbying expenditure (not including compensation paid to Ms. Overland) exceeds \$250 for a calendar year, Marie and Bruce McNamara are required to register and report as lobbyists.

Based on the above Analysis of the Facts and the Relevant Statutes and the submissions of the Parties, the Board makes the following:

Findings Concerning Probable Cause

1. There is probable cause to believe that Carol Overland was attempting to influence administrative action on behalf of Goodhue Wind Truth when communicating with the Minnesota Public Utilities Commission on the site and certificate of need dockets for the Goodhue Wind Project. There is probable cause to believe that in 2011 Carol Overland received over \$3,000 in compensation for these activities, but did not register as a lobbyist. Therefore, there is probable cause to believe that Carol Overland violated the lobbyist registration provisions of Minnesota Statutes section 10A.03.
2. There is probable cause to believe that Daniel Schleck was attempting to influence administrative action on behalf of the Coalition for Sensible Siting when communicating with the Minnesota Public Utilities Commission on the site and certificate of need dockets for the Goodhue Wind Project. There is probable cause to believe that Daniel Schleck received over \$3,000 in compensation for these lobbying activities but did not register as a lobbyist. Therefore, there is probable cause to believe that Daniel Schleck violated the lobbyist registration provisions of Minnesota Statutes section 10A.03.
3. There is probable cause to believe that Goodhue Wind Truth is a principal as defined in Minnesota Statutes section 10A.01, subdivision 33. Therefore, there is probable cause to believe that Goodhue Wind Truth violated the reporting requirements of Minnesota Statutes section 10A.04, subdivision 6.
4. There is probable cause to believe that the Coalition of Sensible Siting is a principal as defined in Minnesota Statutes section 10A.01, subdivision 33. Therefore, there is probable cause to believe that the Coalition of Sensible Siting violated the reporting requirements of Minnesota Statutes section 10A.04, subdivision 6.

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

Order

1. Carol Overland is ordered to register as a lobbyist for Goodhue Wind Truth. The effective date of the registration will be retroactive to 2011. The lobbyist registration must be submitted to the Board within five days of receipt of these findings.
2. Carol Overland must submit lobbyist disbursement reports for 2011 and continue submitting reports until the termination of her registration as a lobbyist for Goodhue Wind

Truth. The 2011 lobbyist disbursement reports must be filed with the Board within 30 days of receipt of these findings.

3. Marie and Bruce McNamara are ordered to submit an Annual Report of Lobbyist Principal in which they disclose the total lobbying expenditures of Goodhue Wind Truth during 2011. The Annual Report of Lobbyist Principal must be filed with the Board within 30 days of receipt of these findings.
4. Marie and Bruce McNamara are ordered to determine their personal expenses for activities that urged others to contact officials in order to influence official actions during 2008, 2009, 2010, and 2011. If the personal expenditures for either individual exceeds \$250 during any year, that individual must register as a lobbyist. Marie and Bruce McNamara will submit any required lobbyist registration for the years in question within five days of receipt of these findings.
5. Daniel Schleck is ordered to register as a lobbyist for the Coalition for Sensible Siting. The effective date of the registration will be retroactive to 2011. The lobbyist registration must be submitted to the Board within five days of receipt of these findings.
6. Daniel Schleck must submit lobbyist disbursement reports for 2011 and continue submitting reports until the termination of his registration as a lobbyist for the Coalition for Sensible Siting. The 2011 lobbyist disbursement reports must be filed with the Board within 30 days of receipt of these findings.
7. Steve Groth is ordered to submit an Annual Report of Lobbyist Principal in which he discloses the total lobbying expenditures of the Coalition for Sensible Siting during 2011. The Annual Report of Lobbyist Principal must be filed with the Board within 30 days of receipt of these findings.
8. The record in this matter is hereby entered into the public record in accordance with Minnesota Statutes section 10A.02, subdivision 11. This matter is closed.

Dated: April 3, 2012

Greg McCullough, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes

Minnesota Statutes, 10A.01, Subd. 2. Administrative action. "Administrative action" means an action by any official, board, commission or agency of the executive branch to adopt, amend, or repeal a rule under Chapter 14. "Administrative action" does not include the application or administration of an adopted rule, except in cases of rate setting, power plant and powerline siting, and granting of certificates of need under section 216B.243.

Minnesota Statutes, 10A.01, Subd. 21. Lobbyist. (a) "Lobbyist" means an individual:

(1) engaged for pay or other consideration of more than \$3,000 from all sources in any year for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials; or

(2) who spends more than \$250, not including the individual's own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials.

(b) "Lobbyist" does not include:

(1) a public official;

(2) an employee of the state, including an employee of any of the public higher education systems;

(3) an elected local official;

(4) a nonelected local official or an employee of a political subdivision acting in an official capacity, unless the nonelected official or employee of a political subdivision spends more than 50 hours in any month attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit other than the political subdivision employing the official or employee, by communicating or urging others to communicate with public or local officials, including time spent monitoring legislative or administrative action, or the official action of a metropolitan governmental unit, and related research, analysis, and compilation and dissemination of information relating to legislative or administrative policy in this state, or to the policies of metropolitan governmental units;

(5) a party or the party's representative appearing in a proceeding before a state board, commission, or agency of the executive branch unless the board, commission, or agency is taking administrative action;

(6) an individual while engaged in selling goods or services to be paid for by public funds;

(7) a news medium or its employees or agents while engaged in the publishing or broadcasting of news items, editorial comments, or paid advertisements which directly or indirectly urge official action;

(8) a paid expert witness whose testimony is requested by the body before which the witness is appearing, but only to the extent of preparing or delivering testimony; or

(9) a party or the party's representative appearing to present a claim to the legislature and communicating to legislators only by the filing of a claim form and supporting documents and by appearing at public hearings on the claim.

(c) An individual who volunteers personal time to work without pay or other consideration on a lobbying campaign, and who does not spend more than the limit in paragraph (a), clause (2), need not register as a lobbyist.

(d) An individual who provides administrative support to a lobbyist and whose salary and administrative expenses attributable to lobbying activities are reported as lobbying expenses by the lobbyist, but who does not communicate or urge others to communicate with public or local officials, need not register as a lobbyist.

Minnesota Statutes, 10A.01, Subd. 33. Principal. "Principal" means an individual or association that:

(1) spends more than \$500 in the aggregate in any calendar year to engage a lobbyist, compensate a lobbyist, or authorize the expenditure of money by a lobbyist; or

(2) is not included in clause (1) and spends a total of at least \$50,000 in any calendar year on efforts to influence legislative action, administrative action, or the official action of metropolitan governmental units, as described in section 10A.04, subdivision 6.

Minnesota Statutes, 10A.03 Lobbyist Registration

Subdivision 1. **First registration.** A lobbyist must file a registration form with the board within five days after becoming a lobbyist or being engaged by a new individual, association, political subdivision, or public higher education system.

Subd. 2. **Form.** The board must prescribe a registration form, which must include:

(1) the name, address, and e-mail address of the lobbyist;

(2) the principal place of business of the lobbyist;

(3) the name and address of each individual, association, political subdivision, or public higher education system, if any, by whom the lobbyist is retained or employed or on whose behalf the lobbyist appears;

(4) the Web site address of each association, political subdivision, or public higher education system identified under clause (3), if the entity maintains a Web site; and

(5) a general description of the subject or subjects on which the lobbyist expects to lobby.

If the lobbyist lobbies on behalf of an association, the registration form must include the name and address of the officers and directors of the association.

Subd. 3. **Failure to file.** The board must send a notice by certified mail to any lobbyist who fails to file a registration form within five days after becoming a lobbyist. If a lobbyist fails to file a form within ten business days after the notice was sent, the board may impose a late filing fee of \$5

per day, not to exceed \$100, starting on the 11th day after the notice was sent. The board must send an additional notice by certified mail to a lobbyist who fails to file a form within 14 days after the first notice was sent by the board that the lobbyist may be subject to a civil penalty for failure to file the form. A lobbyist who fails to file a form within seven days after the second notice was sent by the board is subject to a civil penalty imposed by the board of up to \$1,000.

Subd 4. **Publication.** The restrictions of section 10.60 notwithstanding, the board may publish the information required in subdivision 2 on its Web site.

Subd 5. **Exemptions.** For good cause shown, the board must grant exemptions to the requirement that e-mail addresses be provided.