

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

.....

**February 3, 2015  
Nokomis Room  
Centennial Office Building**

.....

**Minutes**

The meeting was called to order by Chair Beck.

Members present: Beck, Rosen, Sande, Wiener

Members absent: Oliver

Others present: Goldsmith, Sigurdson, Fisher, Pope, staff; Hartshorn, counsel (Mr. Goldsmith was excused from the meeting when it reconvened after the first executive session so that he could attend a legislative hearing.)

The meeting did not strictly follow the order of business set forth in the agenda.

**MINUTES** (January 6, 2015)

Member Wiener's motion:	To approve the January 6, 2015, minutes as drafted.
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Vote on motion:	Unanimously passed.
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**CHAIR'S REPORT**

**Board meeting schedule**

The next Board meeting is scheduled for Friday, March 6, 2015.

**EXECUTIVE DIRECTOR TOPICS**

**Status of office operations/Website redevelopment**

Mr. Goldsmith told members that staff had been busy processing year-end campaign finance reports and lobbyist disbursement reports. Mr. Goldsmith said that over 95% of the lobbyist reports had been filed electronically.

Mr. Goldsmith stated that the contract database developer was already at work and was a bit ahead of schedule. Mr. Goldsmith told members that the start date for the contract web developer would be pushed back to March 1 to allow staff to prepare a comprehensive description of the project's desired outcomes.

### **Legislative update**

Mr. Goldsmith presented members with a memorandum on this matter that is attached to and made a part of these minutes. The memorandum discussed carrying forward any unexpended funds to the next biennium for the sole purpose of continuing the website redevelopment project and support for a proposed legislative solution to the *Seaton v. Wiener* litigation.

Mr. Goldsmith also told members that some senators thought that the annual economic interest statement should cover a calendar year instead of April 1 of one year through March 31 of the next year. Mr. Goldsmith said that some senators also thought that the annual statement should be due earlier than the April 15 date currently specified in statute. Mr. Goldsmith asked members if there were any objections to either of these suggestions. The Board had no objections to changing the period covered by the annual statement or the due date provided that the changes were reasonable and did not cause any implementation issues.

After further discussion, the following motions were made:

Member Wiener's motion:                      To adopt the following motion:

That the Board requests and recommends that it be permitted a one-time carry forward of unexpended funds from the 2014-15 biennium into the 2016-17 biennium for the sole purpose of continuing its website redevelopment project. Appropriate reporting will be provided to the chairs and ranking minority party members of the committees of the House and Senate with jurisdiction over the Board's policy and finances. Any of the carried forward funds remaining at the end of fiscal year 2017 shall be cancelled back to the general fund of the state.

Vote on motion:                                      Unanimously passed.

Member Sande's motion:                      To adopt the following motion:

That the Board supports the provision in Senate File 205 that removes large contributors from the calculation of the limit on contributions from specified sources. The Board believes that this is a reasonable and prudent approach to addressing the issues raised in *Seaton v. Wiener* litigation.

Vote on motion:                                      Unanimously passed.

### **Discussion of staff action in response to campaign finance issues disclosed on reports**

Mr. Goldsmith presented members with a memorandum on this topic that is attached to and made a part of these minutes. Mr. Goldsmith told members that campaign finance reports sometimes show a contribution to a 501(c)(3) organization that exceeds the \$100 limit or a contribution to an entity that is not actually a 501(c)(3) organization. Mr. Goldsmith said that the memorandum outlined the staff practice in these situations, which is to work with the committee to convince either the recipient to return the contribution or the candidate to reimburse the committee for the contribution. Under the current approach, the matter is resolved, if at all, by the committee taking remedial steps and reflecting what was done on a subsequent report. Because the prohibition of excess charitable contributions was not under the Board's jurisdiction, no conciliation agreement or findings resulted. Mr. Goldsmith stated that there is no

penalty in the statute for these contributions. Mr. Goldsmith indicated that under the new rules the approach would be to initiate an informal staff review in which efforts to remedy the situation would be undertaken and the matter reduced to a conciliation agreement. If the matter could not be resolved through agreement, it would be brought to the Board for further direction. Mr. Goldsmith asked the Board for direction on the approach that should be used for these contributions. The consensus of the Board was that staff should proceed with a staff review in situations of excess charitable contributions disclosed on campaign finance reports.

## **ADVISORY OPINIONS**

### **Advisory Opinion 439**

Mr. Sigurdson presented members with a memorandum on this matter that is attached to and made a part of these minutes. Before any discussion took place, Mr. Sande recused himself from this matter. Mr. Sande's recusal left the Board without a quorum. Chair Beck stated that the Board would hold a special meeting to consider the matter on Friday, February 6, 2015, at 9 a.m. in Room G-31 of the Minnesota Judicial Center.

## **EXECUTIVE SESSION**

The Chair recessed the regular session of the meeting and called to order the executive session. Upon recess of the executive session, the regular session of the meeting was called back to order and the following business was conducted.

## **CHAIR'S REPORT**

### **Discussion of analysis that could be undertaken based on 2014 campaign finance reporting**

Mr. Goldsmith was excused for the remainder of the meeting so that he could attend a legislative hearing. Mr. Goldsmith had provided members with a memorandum on this matter that is attached to and made a part of these minutes. Mr. Sigurdson said that there were three possible ways to present information on the Board's website. The quickest method would be to post static documents listing the information. The second method would be to post data on the internet in a more interactive format, similar to spreadsheets. The third method would be to present information in a graphic format. The graphic format, however, would take several months to develop. After discussion, the consensus of the Board was that by the March meeting, staff should post static documents with campaign finance information on the website along with a disclaimer stating that the posted data had not yet been reconciled.

## **EXECUTIVE DIRECTOR TOPICS**

### **Board Annual Report for Fiscal Year 2014**

Mr. Sigurdson presented members with a draft Annual Report that is attached to and made a part of these minutes. Mr. Sigurdson explained what was covered by the report and that it was statutorily required.

After discussion, the following motion was made:

Member Wiener's motion: To approve the Annual Report as drafted.

Vote on motion: Unanimously approved.

**ENFORCEMENT REPORT**

**Waiver requests**

<u>Name of Candidate or Committee</u>	<u>Late Fee Amount</u>	<u>Civil Penalty Amount</u>	<u>Reason for Fine</u>	<u>Factors for waiver</u>	<u>Board Member's Motion</u>	<u>Motion</u>	<u>Vote on Motion</u>
RKM&C Fund	\$3,500 (14 - \$250 LFFs)	\$0	24 hr. notice	Firm made one bulk deposit into its fund's account. Fund allocated this deposit between 14 different partners. Late filing of 24 hour notice led to 14 different late filing fees of \$250.	Weiner <hr/> Sande	To reduce late fee to \$250. <hr/> To waive the late fee.	Failed (3 ayes, 1 nay) ----- Unanimous

**Informational items**

**A. Payment of a late filing fee and civil penalty for 2012 Amended Year-end Report of Receipts and Expenditures**

Greg Copeland for Senate, \$200.32

**B. Payment of a late filing fee for September 23, 2014 Report of Receipts and Expenditures:**

School Lunch Bunch, \$50

**C. Return of Public Subsidy:**

Brent Millsop Campaign Fund, \$90.06  
 Friends of Xavier Bicott, \$196.53  
 Andrew Livingston for MN House, \$80.20

**LEGAL COUNSEL'S REPORT**

Mr. Hartshorn had nothing to add to the provided report which is attached to and made a part of these minutes.

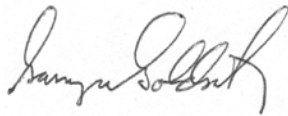
**EXECUTIVE SESSION**

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 Chair had the following items to report into regular session:

Decision in the matter of the Complaint of Common Cause regarding the American Legislative Exchange Council (ALEC)

**OTHER BUSINESS**

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



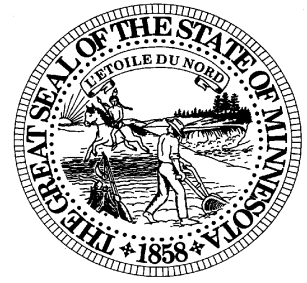
Gary Goldsmith  
Executive Director

Attachments:

- Memorandum regarding the legislative session
- Memorandum regarding staff action in response to disclosed charitable contributions
- Memorandum regarding draft Advisory Opinion 439
- Draft Advisory Opinion 439
- Memorandum regarding analysis that could be undertaken based on 2014 reports
- Draft annual report
- Legal report
- Decision in the matter of the Complaint of Common Cause regarding ALEC

Minnesota

*Campaign Finance and  
Public Disclosure Board*



**Date:** January 27, 2015

**To:** Board

**From:** Gary Goldsmith, Executive Director

**Telephone:** 651-539-1190

**Re:** Legislative update and Board decisions

I will provide a full legislative update at the meeting. However, I want to use this memo to provide background on two items I would like the Board to discuss at the meeting.

First, as members know, we are not at the point that I wanted to be by now with respect to development of our new website. This also means that we have not used as much of our appropriation as I had anticipated. The result is that we may not be able to prudently use the money we had budgeted for the website by the end of the biennium.

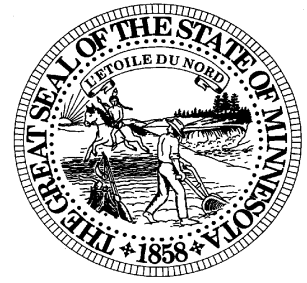
I have suggested in appearances in legislative committees that the Board may request a one-time approval to carry forward unspent funds from the current biennium to the next biennium with the condition that the funds be used solely for continued development of the website and that whatever reports the legislature deems appropriate be provided. This carryforward would be available for the 2016-17 biennium only.

I will have a budget update at the meeting so that we can better understand how much money is involved. If the Board wants to make this request a part of its legislative recommendations, a motion to that effect will be required.

Second, the Senate version of the technical bill now includes removal of large contributors from the special source limit. This change would achieve on a permanent basis what Judge Frank has done through a temporary injunction. Previously the Board recommended that the legislature enact a that would end the *Seaton v. Wiener* litigation, but did not recommend any specific approach. The Board may now wish to endorse the Senate approach as one that is reasonable and that could easily be implemented by the agency. This would also take a motion.

Minnesota

# *Campaign Finance and Public Disclosure Board*



**Date:** January 27, 2015

**To:** Board members

**From:** Gary Goldsmith, Executive Director

**Telephone:** 651-539-1190

**Re:** Request for direction regarding handling of excess or prohibited charitable contributions disclosed on campaign finance reports

Under the new statutes and rules, three types of staff action can occur when a report includes a transaction that appears to constitute a violation.

First, the rules contemplate a staff "preliminary inquiry." This is prior to a staff review or an investigation. The concept was developed during the rulemaking to ensure that staff can contact filers to determine if matters can be resolved by amendment before any formal proceeding is undertaken. This is consistent with the Board's longstanding practice of recognizing that filers have a right to amend reports to correct errors and that there is no penalty for filing a report with an error if the error is corrected once the filer is notified of the problem.

The next level of inquiry is the "staff review." A staff review is a form of investigation, although taken informally and without subpoena authority. The rules provide that unless otherwise directed by the Board, the Executive Director must initiate a staff review "when a preliminary inquiry into the information provided in a report suggests that there has been a violation [of the provisions under the Board's jurisdiction]." Minn. R. 4525.0320, subp. 2.

At the recommendation of the Executive Director, the Board has directed the Executive Director to bring all matters to the Board prior to initiating staff reviews. This practice was initiated so that both the staff and the Board could develop experience with the new procedures before fully implementing the Executive Director's mandate to initiate certain staff reviews without prior Board action.

The highest level of inquiry is the Board-ordered formal investigation. That procedure is not the subject of this memo.

Staff periodically encounters reports on which a candidate discloses a contribution to a charity in excess of the \$100 that is permitted by section 211B.12. A similar violation results when a candidate makes a contribution to an association that seems like a charity, but is not actually a charitable organization with nonprofit status under Internal Revenue Code section 501(c)(3), which is a requirement for charitable contributions.

The presumed basis for the limitation of charitable contributions and the prohibition of contributions to associations that do not have section 501(c)(3) status is that money is given to candidates for election purposes. Charitable or other contributions divert that money to another purpose not contemplated by the donor. Additionally, money donated to charitable associations may include money for which the original donor received a political contribution refund, which indirectly results in the transfer of state money to the charity.

Section 211B.12 came under the Board's jurisdiction as the result of 2013 legislation. Prior to this section being under the Board's jurisdiction, staff would notify committees of apparent violations and recommend that the committee obtain a return of the prohibited contribution or that the candidate reimburse the committee for the contribution. However, no action was taken regardless of whether or not the committee accepted the staff advice. Now that the Board has actual authority over the provision, staff requests direction as to how to handle reported transactions that disclose excess contributions to a 501(c)(3) charity or non-political contributions to an association that is not a charity.

The Executive Director is currently aware of several reports that disclose charitable contribution violations. This series of violations may provide an opportunity for the Board to implement the rule that requires the Executive Director to initiate the staff review (after preliminary inquiry to ascertain that there is a violation) without specific Board authorization for each matter.

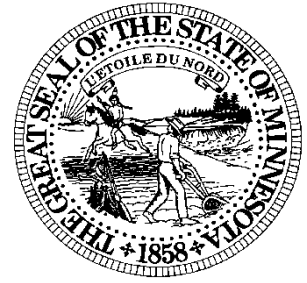
In the context of a staff review, staff would work with the committee to remedy the matter. In most cases, this would require the committee to obtain a return of the excess portion of the charitable contribution. If this is not possible, the candidate could agree to reimburse the committee for the contribution, making it the candidate's own contribution. In each case, the goal would be to reach an agreement that could be presented to the Board for acceptance.

Since this series of violations is new, staff recommends that the agreements be presented to the Board before being signed by the Executive Director. This will give the Board and staff an opportunity to develop experience with these matters before the process is changed to present agreements to the Board for ratification after being signed by the committee and the Executive Director.



Minnesota

*Campaign Finance and  
Public Disclosure Board*



**Date:** January 26, 2015

**To:** Board Members

**From:** Jeff Sigurdson  
Assistant Director

**Telephone:** 651-539-1189

**Re:** Advisory Opinion 439

The request for Advisory Opinion 439 was received and accepted by the Executive Director on January 22, 2015. The request was submitted on behalf of Senator Tomassoni by Michael Ahern, the senator's legal counsel.

Senator Tomassoni has accepted the position of Executive Director for an association that is represented at the legislature by a lobbyist. The request asks if this employment will create a conflict of interest for the Senator.

The draft opinion provides that a conflict of interest does not exist. Under the provisions of Chapter 10A a conflict of interest occurs from a specific decision or action that meets certain criteria. A conflict of interest is not created by a legislator's employment or occupation. As drafted this opinion is consistent with prior advisory opinions issued to members of the legislature on this subject.

Please contact me if you have questions or changes that you would like incorporated into the draft.

Attachments:

Draft Advisory Opinion 439

Request letter dated January 21, 2015

Attachments provided with the request

State of Minnesota  
**Campaign Finance and Public Disclosure Board**  
Suite 190, Centennial Building. 658 Cedar Street. St. Paul, MN 55155-1603

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

Issued to: Senator David Tomassoni  
75 Rev. Dr. Martin Luther King Jr. Blvd.  
Capitol, Room G-9  
St. Paul, MN 55155-1606

**RE: Potential Conflict of Interest for a Member of the Legislature**

**ADVISORY OPINION 439**

**SUMMARY**

Employment by a member of the legislature as the executive director of an association that is represented by a lobbyist does not in itself create a conflict of interest. An official action or decision by the legislator may create a conflict of interest under specific circumstances.

**FACTS**

As a State Senator, and therefore a public official as defined in Minnesota Statutes Chapter 10A, you authorized your legal counsel to request on your behalf an advisory opinion from the Campaign Finance and Public Disclosure Board (the Board) based on the following facts that were provided in the letter requesting the advisory opinion and in documentation provided with the request.

1. You have been hired as the Executive Director of the Range Association of Municipalities and Schools (RAMS).
2. As a result, RAMS is now for you an “associated business” as defined in Minnesota Statutes section 10A.01, subdivision 5, because the association will be compensating you more than \$50 a month.
3. RAMS is a voluntary association of political subdivisions that has been represented by a lobbyist registered with the Board since 1991. Therefore RAMS is a “principal” as defined in Minnesota Statutes section 10A.01, subdivision 33.
4. You have provided with your request a copy of an agreement between you and RAMS that details your duties as Executive Director. The agreement specifically states that you will not be a lobbyist for RAMS, that you will not be involved with the hiring of a lobbyist for the association, and that the lobbyist will not report to the position of Executive Director.
5. You are aware of prior advisory opinions issued by the Board that considered potential conflicts of interest for a member of the Minnesota legislature and the

requirements when a conflict of interest exists.<sup>1</sup> In particular you note that Advisory Opinion 325 considered a potential conflict of interest and concluded that “the occupation or profession of a legislator does not in itself create a conflict of interest.” Based upon prior Board opinions and the provisions of Chapter 10A you and your legal counsel have concluded that a conflict of interest did not occur when you accepted the position of Executive Director of RAMS. However, you are also aware that an advisory opinion issued by the Board provides safe harbor only to the individual or association that requested the opinion. Therefore, you have asked to the Board for an advisory opinion specific to the facts of this situation.

### **ISSUE**

Will employment as Executive Director of RAMS create a conflict of interest, as defined in Minnesota Statutes section 10A.07, with your service as a State Senator?

### **OPINION**

The only conflict of interest provision within the jurisdiction of the Campaign finance and Public Disclosure Board is Minnesota Statutes section 10A.07. No employment relationship, in itself, will give rise to a conflict of interest under this statute. Instead, the statute requires that public officials evaluate the decisions they are required to make and the actions they are required to take as a part of their official duties and to determine if a conflict of interest exists.

To determine if there is a conflict of interest a public official must consider two criteria, both of which are established by Minnesota Statutes section 10A.07. First, will the official action substantially benefit either the public official's personal financial interests or the financial interests of an associated business? If the answer is yes then the second criteria is whether the benefit will be greater for the public official or the official's associated business than the affect on other members of the same business classification, profession, or occupation. Only when both conditions are true does the public official face a conflict of interest.

Under the statute a legislator who finds that an action will create a conflict of interest must prepare a written statement describing the matter requiring the official's action or decision and the conflict of interest and deliver the notice to the presiding officer of the legislative body in which the official serves. If there is not time for a written statement, the legislator should orally inform the legislative body of the potential conflict. A legislator may be excused from taking part in an action or decision that creates a conflict of interest.

Hypothetically, a specific issue or appropriation before the Senate could benefit RAMS in a way that will create a conflict of interest for you. But accepting employment with RAMS does not create a conflict of interest with the position of State Senator under the provisions of Chapter 10A.

Issued: February 3, 2015

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George A. Beck, Chair  
Campaign Finance and Public Disclosure Board

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<sup>1</sup> See Advisory Opinions 237, 264, 325, 355, and 368. Advisory opinions are available for viewing at [www.cfboard.state.mn.us/ao/index.html](http://www.cfboard.state.mn.us/ao/index.html).

## Cited Statutes and Administrative Rules

### 10A.01 Definitions.

**Subd. 5. Associated business.** "Associated business" means an association, corporation, partnership, limited liability company, limited liability partnership, or other organized legal entity from which the individual receives compensation in excess of \$50, except for actual and reasonable expenses, in any month as a director, officer, owner, member, partner, employer or employee, or whose securities the individual holds worth more than \$2,500 at fair market value.

### 10A.07 Conflicts of Interest.

Subdivision 1. **Disclosure of potential conflicts.** A public official or a local official elected to or appointed by a metropolitan governmental unit who in the discharge of official duties would be required to take an action or make a decision that would substantially affect the official's financial interests or those of an associated business, unless the effect on the official is

no greater than on other members of the official's business classification, profession, or occupation, must take the following actions:

(1) prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict of interest;

(2) deliver copies of the statement to the official's immediate superior, if any; and

(3) if a member of the legislature or of the governing body of a metropolitan governmental unit, deliver a copy of the statement to the presiding officer of the body of service.

If a potential conflict of interest presents itself and there is insufficient time to comply with clauses (1) to (3), the public or local official must orally inform the superior or the official body of service or committee of the body of the potential conflict.

Subd. 2. **Required actions.** If the official is not a member of the legislature or of the governing body of a metropolitan governmental unit, the superior must assign the matter, if possible, to another employee who does not have a potential conflict of interest. If there is no immediate superior, the official must abstain, if possible, in a manner prescribed by the board from influence over the action or decision in question. If the official is a member of the legislature, the house of service may, at the member's request, excuse the member from taking part in the action or decision in question. If the official is not permitted or is otherwise unable to abstain from action in connection with the matter, the official must file a statement describing the potential conflict and the action taken. A public official must file the statement with the board and a local official must file the statement with the governing body of the official's political subdivision. The statement must be filed within a week of the action taken.

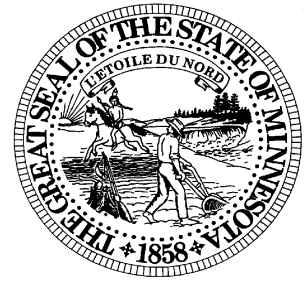
Subd. 3. **Interest in contract; local officials.** This section does not apply to a local official with respect to a matter governed by sections 471.87 and 471.88.

Subd. 4. **Exception; judges.** Notwithstanding subdivisions 1 and 2, a public official who is a district court judge, an appeals court judge, or a Supreme Court justice is not required to comply with the provisions of this section.

Minnesota

## *Campaign Finance and Public Disclosure Board*

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**Date:** January 27, 2015

**To:** Board members

**From:** Gary Goldsmith, Executive Director

**Telephone:** 651-539-1190

**Re:** Discussion of data analysis from 2014 reports

The Chair has asked me to consider what the agency might do to provide more meaningful information about the 2014 elections in contexts that help citizens understand the role money plays in affecting election results.

One initiative that staff plans to undertake and to which I assign a high priority is our District View concept. This will provide both summary and detailed campaign finance information from the district perspective. The details are still much under development, but our data project, now underway, will fully support this initiative. It will be one of the first efforts undertaken when we add a web developer to our resources in February.

The Chair and staff would like to get members' ideas for analysis and display of campaign finance data in ways that go beyond just displaying reports or showing columns of numbers. We will also seek input from our user advisory group on this subject.

Another area for discussion is the question of what we don't know. We only know what is reported to us. From reports filed, we can analyze how much money comes through associations for which we don't know the original source of funds. Of course, as Chair Beck has pointed out, this is the "Russian doll" problem. Once an agency seeks disclosure from the next level up from the reporting association, donations move another level up, again avoiding original source disclosure.

We also don't know anything about the magnitude of spending that avoids the campaign finance disclosure system altogether by avoiding classification as independent expenditures by avoiding the "magic words." Without an electioneering communication law and an expanded definition of express advocacy, it is easy to avoid disclosure, even right before an election.

It is likely that the political parties or others monitor to some extent the proliferation of "off-the-books" campaign communications. However, whether the Board could or should undertake to monitor communications that are not under its jurisdiction is a sensitive policy question. When the question came up once previously, the Board declined to engage in such an effort.

# **Report of the Minnesota Campaign Finance and Public Disclosure Board**



## **Covering Fiscal Year 2014**

July 1, 2013 - June 30, 2014

Issued: February 3, 2015

CAMPAIGN FINANCE and PUBLIC DISCLOSURE BOARD

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Minnesota

# *Campaign Finance and Public Disclosure Board*

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**DATE:** February 3, 2015

**TO:** The Honorable Mark Dayton, Governor  
The Honorable Sandra Pappas, President of the Senate  
The Honorable Thomas Bakk, Senate Majority Leader  
The Honorable Kurt Daudt, Speaker of the House  
The Honorable Joyce Peppin, House Majority Leader  
The Honorable David Hann, Senate Minority Leader  
The Honorable Paul Thissen, House Minority Leader

**FROM:** George Beck, Chair  
Campaign Finance and Public Disclosure Board

**SUBJECT:** Report of Board activities during fiscal year 2014 (July 1, 2013, through June 30, 2014)

Pursuant to Minnesota Statutes section 10A.02, subdivision 8 (a), the Campaign Finance and Public Disclosure Board submits this report of the Board's activities during fiscal year 2014.

The Board, consistent with its objectives and administrative procedures, provided guidance to the thousands of individuals and associations whose disclosure of certain political, economic interest, and lobbying activities is regulated by the Campaign Finance and Public Disclosure Act, Minnesota Statutes, Chapter 10A.

Included in this report is information about the campaign finance disclosure, the filing of lobbyist disbursement and lobbyist principal reports, and the filing of statements of economic interest by public officials.

Throughout its activities the Board strives to accomplish its mission; which is to promote public confidence in state government decision-making through development, administration, and enforcement of disclosure and public financing programs and ensure public access to and understanding of information filed with the Board.

We recognize the importance the State of Minnesota places on public disclosure laws and the regulation of campaign finance activity and appreciate the trust placed in the Board and its staff by the Legislature and the Office of the Governor.



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## **EXECUTIVE SUMMARY**

The Campaign Finance and Public Disclosure Board is charged with the administration of the Campaign Finance and Public Disclosure Act, Chapter 10A of Minnesota Statutes. During fiscal year 2014, the Board faced two challenges in addition to its usual work in the administration and enforcement of Chapter 10A. The first was preparing the Board's computer hardware and databases to support future technology enhancements, specifically including a redesigned website. The second was implementing new investigation procedures enacted in 2014 and undertaking an expedited rulemaking directed by the legislature to augment those procedures.

In 2013, the legislature appropriated additional funds to the Board in part to support technology projects that would better serve the regulated communities and provide better disclosure to the general public. One of the most anticipated projects is a redesigned Board website. The Board's existing computer infrastructure, however, was not adequate to support the type of interactive features and on-demand access to data that will be key features that will be enhanced on the redesigned website. Significant work was required during the fiscal year to upgrade the Board's hardware and to reconfigure both the current and upgraded systems to efficiently support the Board's existing operations and any future enhancements to the website.

Staff also worked on initiatives to insure that the data that will be accessible from the new website is reliable. Between 2000 and 2013, over \$141,000,000 was reported in contributions between political committees, candidate committees, and party units registered with the Board. Because these contributions are both made and received by registered committees it should be possible to reconcile the contributions on reports submitted to the Board. In the database of contributions available on the Board's website approximately \$26,000,000 in contributions between registered committees did not reconcile. At the Board's direction, staff focused on the most recent reporting years and reconciled 99.9% of the transactions for the years 2011, 2012, and 2013. Staff reconciled 97% and 98% of the transactions for 2009 and 2010, respectively. Due to these efforts, users will be able to rely on the accuracy of the data generated by enhanced search functions on the redesigned website. Further information on the reconciliation project is available on page 13.

In 2014, the legislature repealed the statutory directive requiring the Board to investigate every complaint and gave the Board more flexibility to allocate its investigative resources to match the seriousness of an alleged violation. The legislature also added two additional requirements to the process used by the Board to investigate complaints: a prima facie determination and a probable cause determination. The Board and staff worked quickly to implement these procedures and to develop the notices required by the legislation. Additional information on changes to Chapter 10A is found on pages 15 and 26.

The legislature also directed the Board to use the expedited process to adopt rules setting forth 1) the processes that the Board would use to initiate and oversee investigations; 2) when summary proceedings would be available; 3) the dedication of staff resources in taking witness testimony and conducting discovery; 4) the parties' rights and opportunities to be heard by the Board; and 5) Board hearings and dispositions of complaints, audits, and investigations.

The Board chair appointed three members to a rules committee. Over the course of four public meetings and a public hearing, the committee drafted proposed rules that were preliminarily approved by the Board. In addition to implementing the new legislative procedures related to complaints, the proposed rules establish less formal processes that can be used to review less serious violations and situations where the magnitude of a violation is not yet known. The proposed rules also protect individual due process rights by specifying the procedures that the Board will use to conduct all audits and investigations.

While the Board faced these unusual challenges in administering the campaign finance provisions of Chapter 10A, the lobbyist program remained relatively stable. About 1,400 lobbyists were registered with the Board at any one time throughout the fiscal year. The lobbyists represented about 1,300 principals. The principals reported total expenditures of \$74,753,493 in 2013. Additional information on the lobbyist program is found on page 23.

The economic interest disclosure program required public officials in approximately 2,180 positions to file economic interest statements with the Board. This number will grow significantly as legislation passed in 2013 takes effect to add judges and county commissioners elected on or after January 1, 2014, to the list of public officials who file with the Board. Details on the economic interest disclosure program are found on page 26.

During the fiscal year, the Board held nine scheduled meetings. During the meetings the Board issued three advisory opinions; reviewed and approved ten orders that resolved investigations based both on complaints filed with the Board and on inquiries initiated by the Board from the staff review of disclosure reports; and offered fifteen conciliation agreements to resolve contribution and spending limit violations of Chapter 10A.

The Board looks forward to building on its accomplishments in fiscal year 2014 to further improve the services provided to the regulated community and to the public.

## **INTRODUCTION TO THE BOARD**

### **Authority**

The Campaign Finance and Public Disclosure Board was established by the state legislature in 1974 through enactment of Chapter 10A of the Minnesota Statutes. Throughout its history the Board has enforced the provisions of Chapter 10A, promulgated and enforced Minnesota Rules 4501 through 4525, and issued advisory opinions to guide clients in meeting the chapter's requirements.

New authority was given to the Board in Laws of 2013, Chapter 138, Article 1, which extended the Board's jurisdiction to three sections of Chapter 211B. Those sections are (1) 211B.04, which governs the "prepared and paid for" form of disclaimer, (2) 211B.12, which specifies the purposes for which campaign money may be legally used, and (3) 211B.15, which governs corporate contributions. The new authority is limited to those individuals and associations already under the Board's jurisdiction under Chapter 10A. The Board's new jurisdiction means that it may conduct investigations of possible violations of these statutes and may also issue advisory opinions on these provisions. Article 1 of Chapter 138 went into effect on May 25, 2013.

### **Mission Statement**

To promote public confidence in state government decision-making through development, administration, and enforcement of disclosure and public financing programs which will ensure public access to and understanding of information filed with the Board.

## **Functions**

Core functions of the Board include administration and management of the:

- registration and public disclosure by state legislative, constitutional office, and judicial office candidates, political party units, political committees, and political funds;
- state public subsidy program that provides public funding to qualified state candidates and the state committees of political parties;
- registration and public disclosure by lobbyists and principals attempting to influence state legislative action, administrative action, and the official action of metropolitan governmental units;
- disclosure of economic interest, conflicts of interest, and representation of a client for a fee under certain circumstances for designated state and metropolitan governmental unit officials.

## **Goals and Objectives**

- Create better compliance with the Campaign Finance and Public Disclosure Act by moving to an educational model in which providing easy to access information and training reduces the number of violations.
- Provide fair and consistent enforcement of the Act.
- Help citizens become better informed about public issues related to the Act.

## **Board and Staff**

- The Board consists of six members, none of who may be an active lobbyist, a state elected official, or an active candidate for state office. The Board is not non-partisan; rather it is multi-partisan, with no more than three of the members of the Board supporting the same political party. Additional information about Board composition and members is found below.
- The Board was able to maintain 9 full time equivalent positions during the fiscal year. Additional information about Board staff is found beginning on page 31.

## **Board Member Qualifications**

The Board consists of six citizen members who are responsible for the administration of the Campaign Finance and Public Disclosure Act. Members of the Board are appointed by the Governor to staggered four-year terms. Their appointments must be confirmed by a three-fifths vote of the members of each body of the legislature. Two members must be former members of the legislature who support different political parties; two members must be persons who have not been public officials, held any political party office other than precinct delegate, or been elected to public office for which party designation is required by statute in the three years preceding the date of their appointment; and the other two members must support different political parties. The Board holds regular monthly meetings, which are open to the public and executive session meetings which are closed to the public.

## **Board Members - July 1, 2013, through June 30, 2014**



**George Beck**

George Beck was appointed to the Board in February of 2012 by Governor Mark Dayton for a term ending in January of 2016. He fills a Board position requiring a member who has not been a public official, held any political party office other than precinct delegate, or been elected to public office for which party designation is required by statute in the three years preceding the member's appointment. Judge Beck is a retired administrative law judge who served in that position for nearly 30 years. He presently works as an arbitrator with the American Arbitration Association and also serves on the Hennepin County Human Resources Board. Judge Beck holds a BA degree from the University of Chicago and a JD degree from the University of Minnesota Law School.



**Andy Luger - Left Board October 9, 2013**

Andy Luger was appointed in March 2011 by Governor Mark Dayton for a term ending in January 2015. Mr. Luger resigned from the Board on October 9, 2013. He filled a Board position requiring a member who supports a political party but otherwise has no restrictions on previous political activities. He graduated from the Georgetown University Law Center magna cum laude and is a summa cum laude graduate of Amherst College.

### **Neil Peterson**



Neil Peterson was appointed in February of 2012 by Governor Mark Dayton for a term ending in January of 2016. He fills the position of a former RPM legislator and served as a state representative from 2005 - 2008. Mr. Peterson is active in the second half of his business career in commercial/industrial real estate, client advisory and property management. The first half of his business career was in commercial banking. Concurrently, he was elected to public office in Bloomington, serving four terms on the city council and three terms as mayor; his last term overseeing the construction and opening of the Mall of America. He was appointed to the Metropolitan Council by Governor Carlson and served 4 years before withdrawing from public office in 1999. During his two terms in the state legislature Mr. Peterson was recognized for involvement in passage of legislation for the new Twins Stadium, Smoke Free Minnesota, and transportation funding. He has a degree in economics from Hastings College, Hastings Nebraska, and Stonier Graduate School of Banking, Rutgers University. He is married to his high school sweetheart Patricia, and they enjoy their three daughters and eight grandchildren.



### **Ed Oliver**

Ed Oliver was appointed in June of 2013 by Governor Dayton for a term ending in January of 2017. He fills a Board position that has no restrictions on previous political activities. Mr. Oliver was a member of the Minnesota State Senate from 1993 - 2002, and served as an Assistant Minority Leader from 1998 - 2002. Mr. Oliver is an arbitrator with FINRA Dispute Resolution, Inc., and is owner and president of Oliver Financial. He currently serves on the board of the Friends of the Mississippi River, and previously served on the Minnesota State Arts Board and as a member of the Great Lakes Commission. Mr. Oliver is a University of Minnesota, College of Liberal Arts graduate where he was awarded a Bachelor of Arts degree with a major in economics.

### **Christian Sande**



Christian Sande was appointed to the Board in October 2013, by Governor Mark Dayton to fill a vacancy in a term that ends in January of 2015. He occupies a Board position for a member who has not been a public official, held any political party office other than precinct delegate, or been elected to public office for which party designation is required by statute in the three years preceding the member's appointment. Mr. Sande is an attorney in private practice focusing on securities fraud litigation and antitrust and consumer fraud class actions. In the years prior to his appointment, Mr. Sande was a candidate for statewide office and has served as treasurer and legal counsel for several political funds and candidate committees. He is a member of the Minnesota and Washington State Bar Associations and the Public Investors Arbitration Bar Association. He is a graduate of Hamline University College of Liberal Arts and William Mitchell College of Law.

### **John Scanlon - - Left Board March 1, 2014**



John Scanlon was appointed in October 2008 by Governor Tim Pawlenty to fill an unexpired term and reappointed in January 2010 for a term ending in January 2014. Mr. Scanlon continued to serve until a new member was appointed by the Governor. He filled a Board position requiring a member who has not been a public official, held any political party office other than precinct delegate, or been elected to public office for which party designation is required by statute in the three years preceding the member's appointment to the Board. Mr. Scanlon is an assistant general counsel with 3M Company. He currently provides general legal counsel to several 3M divisions and U.S.-based subsidiaries in a variety of substantive areas of law including contract, antitrust, product liability, product representation, and distribution. Previously he was an attorney with Dorsey and Whitney in Minneapolis and a law clerk to U.S. District Court Judge Paul A. Magnuson. He is a graduate of the University of Notre Dame and Notre Dame Law School.





**Deanna Wiener**

Deanna Wiener was appointed in March 2011 by Governor Mark Dayton for a term ending in January of 2015. She fills the position of a former DFL legislator and served as a state senator from 1993-2003. Ms. Wiener has been a Realtor since 1977 and is currently a Broker and Co-owner of Cardinal Realty Co. She is also a partner in land development businesses. Currently she serves as a director to the National Association of Realtors and is a board member of the St. Paul Association of Realtors and serves on the board of the Friends of Mississippi. She is a graduate of St. Mary's Jr. College, now St. Catherine's, with an associate degree in nursing.

**Summary of Board Activities**

**Meetings**

The Campaign Finance and Public Disclosure Board held 9 scheduled meetings during the fiscal year. Minutes of Board meetings are published on the Board's web site. A rules committee was appointed in April 2014. This committee held four public meetings and a public hearing during the fiscal year.

## **Advisory Opinion Procedure**

The Board is authorized to issue advisory opinions on the requirements of the Campaign Finance and Public Disclosure Act (Minn. Stat. chapter 10A), Minnesota Statutes sections 211B.04, 211B.12, and 211B.15 if the requestor is under the jurisdiction of Chapter 10A, and the Hennepin County Disclosure Law (Minn. Stat. §§ 383B.041 - 383B.058). Individuals or associations may ask for advisory opinions based on real or hypothetical situations to guide their compliance with these laws.

A request for an advisory opinion and the opinion itself are nonpublic data. The Board provides Consent to Release Information forms to individuals requesting opinions as part of the procedures under this law. If the requester does not consent to the publication of the requester's identity, the Board generally publishes a public version of the opinion, which does not identify the requester.

A written advisory opinion issued by the Board is binding on the Board in any subsequent Board proceeding concerning the person making or covered by the request and is a defense in a judicial proceeding that involves the subject matter of the opinion and is brought against the person making or covered by the request unless: 1) the Board has amended or revoked the opinion before the initiation of the Board or judicial proceeding, has notified the person making or covered by the request of its action, and has allowed at least 30 days for the person to do anything that might be necessary to comply with the amended or revoked opinion; 2) the request has omitted or misstated material facts; or 3) the person making or covered by the request has not acted in good faith in reliance on the opinion.

A total of three advisory opinions were issued in fiscal year 2014. A summary of each advisory opinion issued during the fiscal year is provided in the review of programs administered by the Board.

## **Education and Training Outreach**

To accomplish the goal of educating clients and the interested public on the compliance and reporting requirements of Chapter 10A Board staff conducted the following training during the fiscal year:

- 14 compliance training sessions for candidates and treasurers and chairs of principal campaign committees, political party units, and political committees and funds. Approximately 200 persons attended the compliance training classes
- 16 computer lab training classes for clients who use the Campaign Finance Reporter software
- 1 seminar for lobbyists prior to the 2014 legislative session.

The Board also maintains nine videos on specific topics related to using Campaign Finance Reporter. The videos are available on the Board's web site. Based on favorable client feedback both of these training tools will be used more extensively in the future.

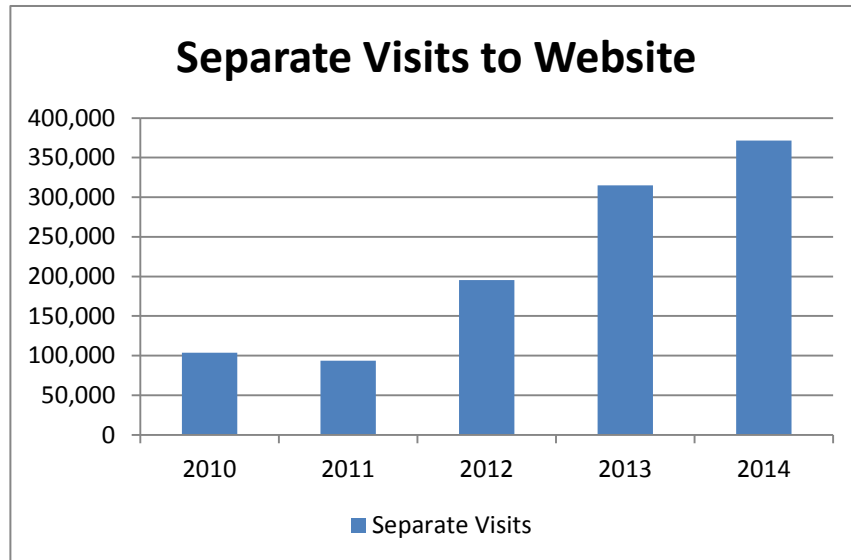
Additionally Board staff participated in numerous panels, presented at many continuing legal education courses, and spoke to interested groups of the public on the requirements of Chapter 10A.

## **Use of Technology**

The Board has long recognized the value of receiving disclosure reports in electronic format. Electronic reports may be moved directly into Board databases where the records are analyzed for compliance issues and then exported to the Board's website for faster disclosure to the public. Electronic filing eliminates the cost and errors associated with data entry of paper reports.

To facilitate electronic filing the Board developed web based applications for filing lobbyist disbursement reports, lobbyist principal reports, and the annual certification by public officials of the economic interest statement. Use of these web based applications is optional, clients may still file a paper report, but all three applications have participation rates of over 90%, which indicates that clients also prefer electronic filing.

The Board increasingly turns to the internet to provide the point of access for clients and the general public to Board applications and information. The Board's website monitoring tools are by calendar year, not fiscal year.



The Board website offers

- Board meeting notices and minutes;
- Board enforcement actions - findings and conciliation agreements;
- Advisory Opinions;
- Lists of lobbyists and associations, candidate committees, political committees, political funds, party units, and public officials;
- Copies of all campaign finance and lobbyist reports;
- Electronic filing for lobbyists and lobbyist principals;
- Electronic filing of the *Annual Statement of Economic Interest* for public officials;
- All Board publications and forms;
- Searchable databases of campaign finance contributions;
- Searchable database of independent expenditures;
- Campaign Finance Summaries;
- Lobbyist Disbursement Summaries;
- Annual Report of Lobbyist Principal Expenditures;
- Training videos on the use of Campaign Finance Reporter

## **PROGRAM REVIEWS**

The Board administers three major and several minor programs as authorized by Minnesota Statutes Chapter 10A. The major programs are campaign finance, lobbying, and economic interest disclosure. The review of each major program includes a general description of the program, a review of legislation passed during the fiscal year that affects the program, a review of any Board advisory opinions issued during the time period for the program area, and an overview of administrative activity that occurred during the fiscal year.

## **CAMPAIGN FINANCE PROGRAM**

### **Program Overview**

The Board administers the provisions of Chapter 10A of the Minnesota Statutes that govern campaign finance laws for principal campaign committees, political committees, political funds, political party units, and independent expenditure committees and funds.

During a non-election year these committees and funds file one year-end report disclosing receipts and expenditures to the Board. During an election year constitutional candidates and appellate court judicial candidates on the ballot file six reports as do state central political party units and legislative caucus party units. All other state level candidates on the ballot and all other party units file three reports during an election year. Political committees and funds file six reports during an election year. Information on the number of reports filed is found on page 19.

Each filed report is reviewed by Board staff for compliance with the disclosure law requirements, including accurate accounting and reporting, and adherence to applicable contribution and expenditure limits. Violations of contribution and expenditure limits are resolved through either a conciliation agreement or in some cases a Board order. Information on Board investigations and enforcement actions is found on page 22.

As a part of the campaign finance program the Board administers and regulates the distribution of payments for the state's public subsidy program, which provides public funding to qualified state candidates and the state committees of political parties. Payments are made following the state primary election to candidates and monthly to the state committees of political parties. Information on the payments is found on page 20 and 21.

## Reconciliation of Contributions

In order to ensure that information on contributions reported to the Board is as accurate as possible staff conducts an annual reconciliation of contributions issued by a registered committee to another registered committee. The reconciliation is to ensure that contributions reported as being made are also reported as being received. It became apparent in 2013 that a significant amount of contributions as recorded in the Board's databases did not reconcile.

For the years 2000 through 2012 a total of \$136,715,444 in contributions between donor and recipient registered committees was reported. Of that amount \$26,265,867 did not reconcile on November 1, 2013. The Board directed staff to identify the reasons for the discrepancies and if possible correct the database. Staff research found that most contributions did in fact reconcile based on the official records of the Board, but that information on paper reports and amendments were not always reflected in the Board database. Additionally, contributions given at the end of a reporting year were often not reported by the recipient committees until the following reporting year.

Using documentation already on file with the Board staff was able to dramatically reduce the amount of contributions that did not reconcile. The Board directed staff to initially focus on contributions reported in the years 2009 through 2012. The 2013 year-end reports were filed after the reconciliation project started. The progress made in the reconciliation of contributions is shown in the table below.

The left column represents the amounts of unreconciled contributions when the Board first focused on the issue in November 2013. The Current Status column represents the progress made by the time this report was issued. The amount of unreconciled contributions has been reduced from the initial \$26,265,867 to \$12,004,214 after adding in the contributions reported in reporting year 2013. The current level at which contributions reconcile for the years 2011 through 2013 is over 99%. Staff will continue to work on the reconciliation and provide the Board with options on improving the quality of the data available to the public.

**Reconciliation of  
Contributions by Year**

				<b>Total</b>	<b>%</b>
	<b>November</b>		<b>Current</b>	<b>Transfers</b>	<b>Reconciled</b>
<b>Year</b>	<b>2013</b>	<b>Year</b>	<b>Status</b>	<b>Reported</b>	<b>Of Total</b>
					<b>Transfers</b>
2000	\$2,842,098	2000	\$2,794,210	\$7,236,994	61.39%
2001	\$470,640	2001	\$373,140	\$2,098,449	82.22%
2002	\$6,241,753	2002	\$1,855,815	\$19,019,603	90.24%
2003	\$372,648	2003	\$351,598	\$1,472,060	76.12%
2004	\$2,335,382	2004	\$2,303,107	\$7,320,368	68.54%
2005	\$248,193	2005	\$185,817	\$2,621,924	92.91%
2006	\$483,346	2006	\$417,121	\$18,527,074	97.75%
2007	\$615,574	2007	\$512,529	\$2,557,740	79.96%
2008	\$2,686,354	2008	\$2,675,135	\$10,633,611	74.84%
2009	\$351,235	2009	\$94,230	\$2,907,453	96.76%
2010	\$4,791,084	2010	\$407,958	\$25,459,972	98.40%
2011	\$500,960	2011	\$3,920	\$4,087,836	99.90%
2012	\$4,326,600	2012	\$24,573	\$32,772,360	99.93%
		2013	\$5,061	\$4,506,703	99.89%
<b>Total</b>	<b>\$26,265,867</b>	<b>Total</b>	<b>\$12,004,214</b>	<b>\$141,222,147</b>	<b>91.50%</b>

## Legislative Action

The Board proposed a broad package of legislative recommendations to the 2014 legislature. The Board developed the recommendations based on extensive experience with real-world campaign finance and public disclosure issues. The recommendations were designed to strengthen Minnesota's regulation and disclosure of money used to influence elections. The Board's recommendations were drafted to provide Minnesota with disclosure that is more rigorous, yet remains consistent with the limits that the First Amendment places on public disclosure systems. The recommendations also included technical changes necessary for the efficient and fair administration of Chapter 10A.

Not all of the Board's recommendations were passed into law, and some amendments were made to the Board's recommendations. Nonetheless, many of the Board's recommendations were passed and became Laws of 2014, Chapter 309, when signed by the Governor on May 21, 2014. Chapter 309 amended Minnesota Statutes Chapter 10A in the following ways:

- **New investigation and audit procedures**

Before investigating a complaint, the Board first must determine whether the complaint states a prima facie violation of the campaign finance laws. If the complaint passes the prima facie test, the Board then must make a probable cause determination. If the Board finds that probable cause exists to believe a violation that warrants a formal investigation has occurred, the Board must initiate an investigation of the complaint.

The Board must conduct audits and investigations subject to the limits of available resources. Data related to an audit is confidential while the audit is being conducted. Upon completion of the audit, the final audit report is public.

The Board was directed to adopt expedited rules establishing additional procedures for audits and investigations. The Board began this rulemaking in May 2014 and held a public hearing on the proposed rules on June 19, 2014.



- **Authorization to develop online campaign finance reporting system**

The Board may develop and maintain an online campaign finance reporting system. The data entered into the online system is not government data until the information has been submitted to the Board in a filed report.

- **Cooperation required for reconciliation**

Individuals or associations that are required to file reports with the Board must cooperate with the Board's efforts to reconcile the transactions disclosed on those reports. Failure to cooperate with the reconciliation can result in late fees and civil penalties imposed by the Board.

- **Late fees and civil penalties**

The late filing fee and civil penalty process and amounts applicable to the failure to amend a report were amended to be consistent with the process and amounts applicable to the failure to file other reports governed by Chapter 10A. The Board is required to waive the portion of a late fee or civil penalty imposed for the late filing of a report or statement when the requester shows good cause for the late filing or submission.

- **Unnecessary reports eliminated**

Judicial and constitutional office candidates are exempted from filing the additional election year reports when their offices are not on the ballot that year or when the candidates lost in the primary election.

- **Standardization of registration, reporting, and disclosure thresholds**

The contribution and expenditure threshold at which someone is deemed a candidate under Chapter 10A was raised from \$100 to \$750 to match the threshold at which a candidate must register a campaign committee with the Board or, if self-funded, start filing reports with the Board. The threshold for disclosing the names of members whose dues were placed in an association's political fund

was raised from \$100 to \$200 to be consistent with other itemization thresholds.

- **Adjusted spending limits published on Board website**

The Board must publish the adjusted spending limits on its website instead of in the State Register.

- **Notice period for matters on Board agenda**

The Board may vote only on matters that were placed on an agenda distributed to all members at least seven days before the Board meeting. By majority consent, the Board may vote on a matter that does not satisfy this requirement.

## **Campaign Finance Litigation**

In 2014, a complaint was filed against the Board titled *Seaton, et. al. v. Wiener, et. al.* The plaintiffs (Douglas Seaton, Van Carlson, Linda Runbeck, and Scott Dutcher) filed the suit on April 9, 2014, in U.S. District Court as a First Amendment challenge to Minnesota's "special source limit" which provides an aggregate limit on the amount of contributions that state-level candidates may accept from political committees, political funds, lobbyists, associations not registered with the board, and large contributors. See Minn. Stat. § 10A.27, subd. 11. The plaintiffs are represented by the Institute for Justice, and the Board is represented by the Office of the Attorney General.

On May 19, 2014, in response to the plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction, the Court enjoined the Board from enforcing the limit as applied to large contributors (individuals who contribute to candidates in amounts equal to more than one-half of the individual contribution limit). The Board maintains its enforcement of the limit as applied to political committees, political funds, lobbyists, and associations not registered with the Board. Litigation is ongoing.

**Advisory Opinions Issued  
Related to the Campaign  
Finance Program**

- Advisory Opinion 436 provided that purchasing research and polling services from a commercial vendor as a defined package for a flat annual fee did not create an in-kind contribution to other committees who purchased the same services at the same flat annual fee. The opinion also provided that joint purchases of research and polling services from a commercial vendor by committees that had a bona fide use for the services were not in-kind contributions as long as each committee paid an equal or proportionate share of the cost of the service.
- Advisory Opinion 437 provided that participation by a candidate in the fundraising efforts or in the promotion of an independent expenditure political committee constituted cooperation or implied consent that would destroy the independence of an expenditure later made by the independent expenditure political committee to influence the candidate's election.
- Advisory Opinion 438 answered questions about when an individual would be deemed a candidate under Chapter 10A. The opinion discussed the various scenarios presented by the requester and concluded that only certain very limited activities could be undertaken by an individual exploring a candidacy without making the individual a candidate under Chapter 10A.

**Campaign Finance Disclosure Reports Filed**

Number of Reports of Receipts and Expenditures filed by candidates, political party units, political committees, and political funds during a reporting year. Reporting years overlap multiple fiscal years.

<b>2013 Nonelection Year</b>	<b>Paper</b>	<b>Electronic</b>	<b>Total</b>
<b>Candidate Committee</b>	212	479	691
<b>Political Party Unit</b>	112	216	328
<b>Political Committee or Fund</b>	105	310	415
<b>Calendar Year 2013 Totals</b>	<b>429</b>	<b>1,005</b>	<b>1,434</b>

**Electronic Filing of Campaign Finance Reports**

Principal campaign committees, political committees, political funds, and political party units have been using the Campaign Finance Reporter software since 1998. The Board provides the software to registered committees without charge. The maintenance, upgrade, training, and helpdesk support of the software is provided by Board staff.

The software provides compliance checks and warnings as records are entered, generates electronic reports for filing that reduce the data entry demands on Board staff, and provides contact management tools for the committees that use the software.

Electronic filing of campaign finance reports became mandatory beginning with the 2012 election cycle. The Board may grant a waiver from the requirement to file electronically if the total financial activity of a committee is less than \$5,000, or if there are technical or other valid reasons why the electronic filing requirement would be an unreasonable burden to the committee.

The Board has developed and distributed a XML schema that is the standard for the electronic filing of campaign finance reports using a third party vendor's software. A total of sixteen committees filed electronically using the XML standard.

	<b>Reporting year</b>	<b>Principal campaign committees</b>	<b>Political committees, political funds, and political party units</b>
<b>Number of Committees Filing Electronically (Numbers are based on calendar year, not fiscal year)</b>	<b>2013</b>	479	526
	<b>2012</b>	581	594
	<b>2011</b>	327	237
	<b>2010</b>	376	174
	<b>2009</b>	292	154
	<b>2008</b>	278	135
	<b>2007</b>	201	114
	<b>2006</b>	228	126
	<b>2005</b>	174	75

### **Public Subsidy Payments**

The Board administers the distribution of payments for the state's public subsidy program, which provides public funding to qualified state candidates and the state committees of political parties. Payments to qualified candidates during the 2014 state general election were made in fiscal year 2015 and are not included in this report.

### **Political Contribution Refund Program**

By statute candidates who sign the public subsidy agreement and political parties are allowed to give political contribution refund receipts to individual contributors. In calendar year 2013 the Department of Revenue issued \$1,142,938 in refunds based on contributions to candidates, and another \$1,423,779 in refunds based on contributions to political parties.

## Political Party Payments

The state committees of political parties receive 10% of the tax check-offs to the party account of the State Elections Campaign Fund. Based on monthly certification from the Department of Revenue during fiscal year 2014 the payments to political parties were as follows:

<b>Party</b>	<b>FY 2014</b>
Democratic Farmer Labor	\$40,442
Independence Party of Minnesota	\$5,230
Grassroots Party	\$749
Libertarian Party	\$1,025
Republican Party of Minnesota	\$20,415
Total Payments to State Party Committees:	<b>\$67,861</b>

## **Campaign Finance Enforcement Actions**

The Board conducts investigations of possible violations of the provisions of Chapter 10A. An investigation is started in response to a complaint filed with the Board or may be initiated by staff based on information disclosed on documents filed with the Board.

Investigations of possible violations of the contribution limits for a candidate, or the expenditure limit for a candidate who signs the public subsidy agreement, are typically resolved with the Board offering a conciliation agreement. The conciliation agreement will set the terms under which excess contributions are returned and provide for a civil penalty to the committee for exceeding the contribution or expenditure limit.

Investigations of other possible violations of Chapter 10A are resolved through the issuance of a Board order. The Board issues an order if a violation of Chapter 10A has occurred, and will issue an order stating that no violation occurred if warranted.

During fiscal year 2014 the Board issued fifteen conciliation agreements to resolve violations of Chapter 10A or those sections of Chapter 211B under the Board's jurisdiction. In fiscal year 2014 the Board issued ten findings to conclude investigations, one of which was also reconsidered in the fiscal year. Of that total seven were in response to a complaint filed with the Board.

To ensure compliance with disclosure deadlines Chapter 10A provides for late fees applied at the rate of \$25 dollars a day for year-end Reports of Receipts and Expenditures, and \$50 a day for pre-primary-election and pre-general-election Reports of Receipts and Expenditures. Disclosure reports that are filed after a \$1,000 late fee has accumulated may also be subject to an additional \$1,000 civil penalty.

Civil penalties and late fees collected by the Board are deposited in the state general fund. A breakdown of late fees and civil penalties collected through enforcement is provided on page 34.

## **LOBBYIST PROGRAM**

### **Program Overview**

The Board administers the provisions of Chapter 10A that govern registration and public disclosure by lobbyists and principals attempting to influence state legislative action, administrative action, and the official action of metropolitan governmental units.

Lobbyists are required to report disbursements for lobbying purposes to the Campaign Finance and Public Disclosure Board two times each year (January 15 and June 15). On the June 15<sup>th</sup> report the lobbyist must provide a general description of the subject(s) lobbied on during the previous 12 months.

Individuals or associations that hire lobbyists or spend \$50,000 or more to influence legislative action, administrative action, or the official action of certain metropolitan governmental units, are principals and are required to file an annual report disclosing total expenditures on these efforts. The report is due March 15<sup>th</sup>, and covers the prior calendar year.

### **Legislative Action**

The 2014 legislature did not pass any changes to the statutes specifically regulating lobbyists and principals. However, the new procedures for investigations and audits that are described in the campaign finance section also apply to lobbyists and principals.

### **Advisory Opinions Issued Related to the Lobbying Program**

No advisory opinions related to lobbying were issued in the fiscal year.



**Lobbyist Disbursement Reports**

The Board has developed a web based reporting system for lobbyists. Use of the system is voluntary, but as shown below it is used by most lobbyists as the reporting method of choice. Lobbyist disbursement reports are available for review on the Board web site.

<b>Reporting year</b>	<b>Reports filed</b>	<b>Electronically filed</b>
<b>2013</b>	3,998	97%
<b>2012</b>	3,823	93%
<b>2011</b>	3,959	94%
<b>2010</b>	3,950	98%
<b>2009</b>	4,028	93%
<b>2008</b>	4,022	92%
<b>2007</b>	3,798	90%
<b>2006</b>	3,445	88%

**Principal Expenditures**

Chapter 10A requires principals to file an annual report disclosing expenditures made in Minnesota to influence legislative, administrative, or official actions by a metropolitan governmental unit. The disclosure is a single number which may be rounded to the nearest \$20,000. Starting in 2012 principals are required to break out the amount spent influencing administrative action of the Minnesota Public Utilities Commission from all other lobbying. Principal expenditures for the last four calendar years are shown below.

	<b>All Other Lobbying in Minnesota</b>	<b>MN Public Utilities Commission</b>	<b>Total</b>
<b>2013</b>	\$69,185,283	\$5,568,210	\$74,753,493
<b>2012</b>	\$59,060,155	\$2,749,590	\$61,809,745
<b>2011</b>	\$65,241,174		\$65,241,174
<b>2010</b>	\$59,172,799		\$59,172,799
<b>2009</b>	\$62,909,757		\$62,909,757

**Lobbyist Program  
Enforcement Actions**

The Board completed one investigation and issued one order regarding the requirement to register as a lobbyist or report as a principal during the fiscal year. This investigation was in response to a complaint filed with the Board. In addition during the fiscal year one lobbyist was fined for making a contribution without providing a lobbyist registration number.

Information on late fees and civil penalties paid by lobbyist and principals for missing a report filing deadline is found on page 34.

## **ECONOMIC INTEREST PROGRAM**

### **Program Overview**

The Board administers the provisions of Chapter 10A of the Minnesota Statutes that govern disclosure of economic interests by public officials and local officials in metropolitan governmental units. There were 2,180 public official positions that filed with the Board in fiscal year 2014. Local officials use forms developed by the Board, but file with the local government unit.

Original statements of economic interest must be filed at the time of appointment, or for candidates, when the candidate files for office. All incumbent candidates and appointed officials must file annually by April 15th of each year a supplemental statement if there are changes to be reported from the previously filed statement. The Board has developed a web based system for submitting supplemental economic interest statements.

### **Legislative Action**

The 2014 legislative session produced the following changes to the economic interest program.

- **Disclosure of business and profession activity categories**

On statements of economic interest, public officials now must list the principal business or professional activity category of each business from which the official receives more than \$50 in any month as an employee when the official also owns 25% or more in the business. Public officials also must list each principal business or professional activity category from which the official received compensation of more than \$2,500 in the past 12 months as an independent contractor. Public officials must use the general topic headings developed by the Internal Revenue Service for reporting self-employment income on Schedule C as the business and professional activity categories.

- **Filing deadline for economic interest statements from judges and county commissioners**

Judges and county commissioners must file their statements

of economic interest within 60 days of taking office. Retired judges serving on senior status are not required to file statements of economic interest.

**Advisory Opinions Issued**

No advisory opinions were issued in the economic interest program in fiscal year 2014.

## OTHER BOARD PROGRAMS

### **Potential Conflict of Interest**

A public or local official who in the discharge of the official's duties would be required to take an action or make a decision that would substantially affect the official's financial interests or those of an associated business must under certain circumstances file a *Potential Conflict of Interest Notice*, or a written statement describing the potential conflict. If there is insufficient time to comply with the written requirements, oral notice must be given to the official's immediate supervisor of the possible conflict. If the official is not permitted or is otherwise unable to abstain from action in connection with the matter, the public official must file the notice with the Board and a local official must file with the governing body of the official's political subdivision. The statement must be filed within one week of the action taken.

### **Public Employees Retirement Association (PERA) Trustee Candidates**

Candidates for election as PERA Trustees are required to file certain campaign finance disclosure reports with the Campaign Finance and Public Disclosure Board under Minn. Stat. § 353.03, subd. 1. Under this statute, the Board prescribes and furnishes to trustee candidates the reporting form and instructions for completing the form.

### **Enterprise Minnesota, Inc.**

The agency name was changed from Minnesota Technology, Inc (MTI) to Enterprise Minnesota, Inc. in 2008. Minn. Stats. §§ 116O.03 and 116O.04 require certain disclosure by the board of directors and the president of Enterprise Minnesota upon appointment and annually thereafter during their terms in office. Under these statutes, the Board prescribes and furnishes to the directors and president the reporting form and instructions for completing the form.

### **State Board of Investment (SBI)**

Minn. Stat. § 11A.075 requires certain disclosure by SBI members upon appointment and SBI employees upon hire and by both annually until termination of appointment or employment. Under this statute, the Board prescribes and furnishes to the members and employees the reporting form and instructions for completing the form.

**Representation Disclosure**

A public official who represents a client for a fee before any individual board, commission, or agency that has rule making authority in a hearing conducted under Minnesota Statutes Chapter 14, and in the cases of rate setting, power plant and powerline siting, and granting of certificates of need under Minn. Stat. § 216B.243, must file a *Representation Disclosure Statement* within 14 days after the appearance has taken place, disclosing the official's part in the action.

**Local Pension Plans**

Members of a governing board of a covered pension plan and the chief administrative officer of the plan are required to file certain statements of economic interest with the governing board under Minn. Stat. § 356A.06, subd. 4.

The Office of the State Auditor prescribes the statement and instructions for completing the statement. The chief administrative officer of each covered pension plan must submit to the Campaign Finance and Public Disclosure Board a certified list of all pension board members who filed statements with the pension board no later than January 15th. Approximately 755 pension plans are required to file with the Board under this law. The Board does not have jurisdiction over enforcement of this certification requirement.

## **STAFF DUTIES**

### **Executive Director**

Facilitate achievement of the Board's goals and objectives. Set agenda and prepare materials for Board and committee meetings. Direct all agency and staff operations. Draft advisory opinions for Board consideration. Serve as the Board's representative to the Legislature and the Executive Branch. Educate and assist clients in compliance with reporting requirements, limits, and prohibitions. Administer the preparation of the biennial budget.

### **Assistant Executive Director**

Serve as advisor to the Executive Director and assist in management of the operations for the agency. Conduct complex investigations and prepare drafts for Board consideration. Reconcile and report on the Board's financial systems. Supervise the agency's compliance programs and information resources. Administer the state public subsidy payment program. Prepare and conduct training classes for clients on campaign finance reporting requirements.

### **Legal Analyst - Management Analyst (2 staff members hold this position)**

Perform legal analysis, make recommendations, and assist in agency administrative rulemaking and the conduct of Board investigations and drafting findings and orders for Board consideration. These positions also serve as an internal management consultant providing support and analysis to the Executive Director and Assistant Executive Director.

### **Compliance Officer Investigator**

Review reconciliation of reported contributions; perform compliance checks on campaign finance reports filed with the Board. Assist in the conduct of Board audits. Monitor cases for Revenue Recapture and Minnesota Department of Revenue Collections Division. Prepare and submit reports to the Department of Finance regarding civil penalties.

### **Programs Administrator**

Provide for distribution, collection, data entry, and filing of disclosure required by Chapter 10A. Collect, store, and retrieve data for the preparation and analysis of summaries of documents filed with the Board. Provide database advice and guidance to Board staff and clients.

**Programs Assistant**

Provide assistance with data entry and initial desk review for all filed reports. Assist with mailing, copying, and filing of all documents filed with the Board in all agency programs. Maintain agency receipts for deposit with the State Treasurer. Provide general administrative and program support.

**Information Technology Specialist III**

Develop, maintain, and manage complex database applications to support administration of all Board programs and activities. Provide technical service, assistance and training to Board staff. Develop, administer, and provide technical support for the Board's website. Provide client training and support in the use of the Campaign Finance Reporter Software.

**Information Technology Specialist III**

Ensure that the technology resources of the Board support applicable business rules and statutory obligations. Provide application design development and administration in response to management requests. Provide high-level programming. Design and support multiple complex relational databases.

**Staff Salaries**

Fiscal Year 2014

<b>Position</b>	<b>Staff</b>	<b>FY 2014</b>
Executive Director	Gary Goldsmith	\$104,570
Assistant Executive Director	Jeffrey Sigurdson	\$90,822
Legal - Management Analyst	Jodi Pope	\$30,581
Legal - Management Analyst	Kyle Fisher	\$22,541
Investigator	Joyce Larson	\$53,975
Information Technology Specialist 3	Jon Peterson	\$66,160
Information Technology Specialist 3	Gary Bauer	\$57,097
Office and Administrative Specialist Principal	Marcia Waller	\$44,910
Office and Administrative Specialist Intermediate	Andrew Schons	\$3,809
Office and Administrative Specialist Intermediate	Elizabeth Schroeder	\$18,785
<b>Total Salaries</b>		<b>\$ 493,250</b>



## BOARD FINANCIAL INFORMATION

Biennial Budget - Fiscal Year 2014

<b>Income Summary</b>	<b>FY 2014</b>
Appropriation	\$1,000,000
<b>Total</b>	<b>\$1,000,000</b>
<b>Expenditure Summary</b>	
Operating budget expenditures	(\$769,408)
Operating budget balance forward to fiscal year 2015	(230,592)

### Board Operating Budget

The Campaign Finance and Public Disclosure Board is funded by a direct appropriation from the Minnesota Legislature. The appropriation for fiscal 2014 was one million dollars. Funds not expended in the first year of a biennium roll forward into the next fiscal year. Over 80% of the Board's budget is used to pay the fixed costs of salary and benefits, rent, and postage for required mailings.

<b>Salary and Benefits</b>	<b>FY 2014</b>
Full time staff (salary and fringe)	\$600,907
Part time staff (salary and fringe)	\$55,504
Other Employee Costs	\$1,622
Per diem for Board Members	\$4,565
<b>Salary and Benefits Sub Total of Expenditures</b>	<b>\$662,598</b>
<b>Operating Expenses</b>	
Office rent	\$39,746
Postage	\$10,098
Photocopy machine leases	\$3,507
Travel	\$4,174
Printing	\$540
Staff development	\$1,595
Board Meeting Expenses	\$3,948
Supplies and Software	\$4,211
MNIT services	\$7,548
Court Reporter and Subpoena Costs	\$1,699

Equipment	\$4,563
Computer Systems Development	\$16,763
Information technology professional services	\$8,016
Other purchased services	\$402
<b>Operating Expense Sub Total of Expenditures</b>	<b>\$106,810</b>
<b>Board Operating Budget Total Expenditures</b>	<b>\$769,408</b>

## Penalties Paid for Late Filing of Disclosure Reports and Other Violations of Chapter 10A

The following is a listing of fees and fines paid during the fiscal year. Some fees and fines may have been assessed prior to fiscal year 2014, and some fees and fines assessed during the fiscal year were not paid by June 30, 2014.

<b>Late Filing Fees</b>	<b>FY 2014 Dollars Paid</b>	<b>Number of Violations</b>
Principal Campaign Committees	\$8,080	37
24-Hour Notice	\$250	1
Political Committees and Funds	\$1,875	16
Political Party Units	\$625	4
Economic Interest Statements	\$565	11
Lobbyist Disbursement Report	\$1,100	17
Lobbyist Principal Annual Report	\$10,320	110
<b>Total Late Fees</b>	<b>\$22,815</b>	<b>196</b>

<b>Civil Penalties</b>	<b>FY 2014 Dollars Paid</b>	<b>Number of Violations</b>
<b>Contribution from Unregistered association</b>	<b>\$825</b>	<b>3</b>
Unregistered Association	\$425	2
Political Committees and Funds	\$0	0
Political Party Units	\$0	0
Candidate	\$400	1
<b>Contribution limits violations</b>	<b>\$6,218</b>	<b>16</b>
Candidates accepted in excess of limit	\$1,150	6
Special source (20%) aggregate limit	\$4,868	9
PCF Contribution exceeded limits	\$0	0
Excess lobbyist contributions	\$200	1
Excess party unit contribution	\$0	0
Candidate exceeded spending limit	\$0	0
<b>Prohibited contributions during session</b>	<b>\$0</b>	<b>0</b>
Political Committee and Funds	\$0	0
Lobbyist	\$0	0
<b>Failure to file disclosure report</b>	<b>\$3,227</b>	<b>5</b>
Candidate Committees	\$2,927	4
Political Committees and Funds	\$0	0
Political Party Units	\$0	0
Lobbyist	\$0	0
Lobbyist Principal	\$0	0
Failure to file amended report	\$300	1
Economic Interest Statement	\$0	0
<b>Independent expenditure violation</b>	<b>\$100,000</b>	<b>1</b>
Political Party Units	\$100,000	1
<b>Total Civil Penalties</b>	<b>\$110,270</b>	<b>25</b>
<b>Total Late Fees and Civil Penalties Deposited in State General Fund</b>	<b>\$133,085</b>	<b>221</b>

**CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD  
February, 2015**

**ACTIVE FILES**

Candidate/Treasurer/ Lobbyist	Committee	Report Missing/ Violation	Late Fee/ Penalty	Referred to AGO	Date S&C Served by Mail	Default Hearing Date	Date Judgment Entered	Case Status
Benjamin Kruse	Minnesotans for Benjamin Kruse	Failure to file: 2013 Year-End Report; 2012 Amended Year-End Report and Pay late filing fees for : 2013 Pre-primary Report; 2013 Pre-general Report; and Economic Interest Statement	\$1,000/\$1,000 \$1,000\$100 \$250 \$200 \$50	10/10/2014	1/6/2015			

**CLOSED FILES**

Greg Copeland	Greg Copeland for Senate	Failure to pay outstanding fees and civil penalties for the late filing of reports due 6/21/2011 and 1/31/2012	\$100/\$1,000 \$100/\$1,000	5/29/2014	7/3/2014			Settled
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**STATE OF MINNESOTA  
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD**

**Findings of Fact, Conclusions of Law, and Order  
In the Matter of the Complaint of Common Cause Minnesota Regarding the  
American Legislative Exchange Council**

**I. The complaint**

On May 15, 2012, the Campaign Finance and Public Disclosure Board received a complaint from Common Cause Minnesota (Complainant) alleging violations by the American Legislative Exchange Council (ALEC) and an individual named Amy Kjose of certain of Minnesota's statutes related to lobbying.

The complaint alleges that as the director of an ALEC task force in 2011, Ms. Kjose was required to register as a lobbyist in Minnesota, but failed to do so or to file the required reports. The complaint further alleges that in 2011 ALEC was a "principal" as defined in Minnesota Statutes section 10A.01, subdivision 33, either by virtue of employing Ms. Kjose as a lobbyist, or by virtue of spending more than \$50,000 in a year on activities to influence Minnesota legislative action. The complaint alleges that ALEC failed to provide the annual report of expenditures required of every principal.

The Board notes that the complaint includes a significant amount of legal citation and argument with regard to ALEC's nonprofit tax status and its lobbying reporting obligation under federal law. Additionally, although the complaint specifically notes certain issue alerts sent to Minnesota legislators and identifies expenses reported by three Minnesota legislators to attend ALEC events, most of the allegations of the complaint are of a more general nature applicable to ALEC's activities to influence legislation in the various 50 states rather than only to ALEC's Minnesota activities. Apparently the Minnesota complaint is a derivation of a complaint on the same subject that Common Cause filed with the Internal Revenue Service. The Board has not considered any of the federal questions raised by the complaint.

During the course of the investigation the Board obtained and considered ALEC documents beyond those submitted by Complainant. These documents include internal ALEC documents that were initially disclosed in connection with a news report in *The Guardian* newspaper as well as additional documents from ALEC's public website and documents from other sources that are deemed reliable.

**II. The response**

On May 22, 2012, Board staff notified ALEC of the complaint and offered ALEC an opportunity to provide a general response.

Because of other Board matters more closely related to the 2012 election, in which two constitutional amendment questions were on the ballot, the Board laid the matter over at its June and July meetings. At its August meeting the Board directed the Executive Director to use staff resources on matters related to the upcoming election and to defer further work on the ALEC matter until resources were available. ALEC was notified of this approach in a letter dated August 8, 2012, and expressed no objection.

On March 13, 2013, the Board notified ALEC by letter that staff resources were now available to undertake investigation of the Common Cause complaint. The letter asked ALEC to provide comprehensive information that would allow the Board to make a determination of the legal status of ALEC under Minnesota's lobbying statutes. On April 12, 2013, ALEC responded through its legal counsel, Mike Wittenwyler. Mr. Wittenwyler provided general information about ALEC and its structure and operations, but did not address the Board's specific requests for information.

Board staff compared the information provided in ALEC's April 12 letter to the Board's March 13 request and concluded that the letter was almost entirely nonresponsive. Staff sent this analysis to ALEC on July 11, 2013, and asked ALEC to respond to the Board's specific requests. In a letter dated July 26, 2013, Mr. Wittenwyler provided an additional response that consisted of an explanation of why ALEC was not required to respond to the Board's requests.

The matter was subsequently laid over at successive Board meetings as staff researched the issues raised by the complaint and ALEC's response and sought additional documentary evidence from the internet and other sources. At its November 2013 meeting the Board reviewed in detail the status of the investigation and the difficulties posed by the continued refusal of ALEC to provide anything but the most basic information about its operations. At that time, the Executive Director explained that staff planned to make a request for information from ALEC that would be more limited than previous requests and would not require ALEC to identify any of its members; an approach that would address one of ALEC's key objections.

On February 13, 2014, staff sent ALEC the narrower request for information. On March 10, 2014, ALEC responded and once again declined to provide any information beyond that which was included in its initial response.

In general, the substance of ALEC's response is that it is an educational organization that does not engage in lobbying as that term is defined by the Internal Revenue Code. ALEC also claims that it cannot be required to disclose either its members or its communications with its members under constitutional law principles.

ALEC also argues that it is not a principal under Minnesota law because it employs no lobbyists and because it has never spent more than \$50,000 in a year to influence Minnesota officials; which is the financial trigger that makes an association a principal even if it does not employ lobbyists.

### **III. Further background**

At its meeting of April 1, 2014, the Board reviewed ALEC's reasons for declining to provide information and its contention that it did not fall under Minnesota's lobbying disclosure laws. The Board also reviewed the options available to compel ALEC to provide additional information. After discussion, the Board directed the Executive Director to develop a detailed legal and factual analysis that would allow the Board to evaluate whether the matter could be decided based on information provided by Complainant and assembled by staff from public sources.

The Board discussed staff's detailed analysis at its meeting of July 8, 2014. Mr. Wittenwyler also appeared at the meeting to urge the Board to dismiss the complaint. At its meeting of August 13, the Board further discussed the status of the matter, voted to set the scope of the investigation to include the years 2011 through 2014, and again laid the matter over.

At its meeting of September 2, 2014, the Board directed the Executive Director to continue the investigation by taking sworn testimony from individuals named as the public sector state co-chairs and the private sector state chair of ALEC. Sworn testimony was taken in November 2014 from Senator Mary Kiffmeyer and Representative Pat Garafalo, the ALEC public sector co-chairs, and from John Gibbs, the ALEC private sector state chair.

The Board discussed this matter at its November 2014 and January 2015 meetings. The Board considered draft findings, conclusions, and order at its February 2015 meeting.

#### IV. Analysis

ALEC argues that neither it nor its employees engage in lobbying under the Internal Revenue Code definition. That definition is, of course, not relevant in Minnesota. The Board's analysis considers whether Amy Kjose is a lobbyist under Minnesota Statutes section 10A.01, subdivision 21, and whether ALEC is a principal under section 10A.01, subdivision 33.

##### **Is Amy Kjose a Minnesota lobbyist?**

The complaint alleges that Amy Kjose is a lobbyist because she is paid by ALEC for activities that constitute lobbying. In Minnesota, a lobbyist is defined as follows:

[A]n individual 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

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.

Minn. Stat. § 10A.01, subd. 21.

The complaint alleges, and ALEC does not dispute, that Ms. Kjose was the director of ALEC's Civil Justice Task Force during the time relevant to this matter. The complaint further alleges that Ms. Kjose's responsibilities require drafting and lobbying on model legislation and that Ms. Kjose has spent more than \$250 in a calendar year on lobbying. The complaint also alleges that the cost of the email system used to send issue alerts and the cost of ALEC conferences should be included when determining if Ms. Kjose spent more than \$250 on lobbying.

However, the Board interprets the \$250 spending trigger to apply only to individuals spending their own money, not to persons authorized by an association to spend the association's money.<sup>1</sup> The complaint does not allege that Ms. Kjose spent any of her own money to communicate with officials and the materials reviewed for this investigation do not suggest that she did so. Thus, Ms. Kjose is a lobbyist only if she was paid more than \$3,000 in a calendar year to communicate with Minnesota legislators or to urge others to do so.

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<sup>1</sup> The position that the \$250 threshold applies to spending personal funds is of longstanding application. The interpretation is in part based on the statutory language in the same provision that excludes costs of the subject individual's own travel expenses. This principle was recently restated in the Matter of the Complaint Regarding the Coalition for Sensible Siting and others, where the Board said that "An individual who spends more than \$250 of **their personal funds** in a calendar year on lobbying" is required to register as a lobbyist. (Emphasis added.)

The Board notes that the complaint does not allege that Ms. Kjose communicated with others to urge them to communicate with Minnesota legislators to influence legislative action and the Board has found no evidence that she did so. Thus, if a determination is to be made that Ms. Kjose is a lobbyist, it must be based on actions taken by her that constitute communication with Minnesota legislators to influence legislative action.

The evidence submitted by the Complainant includes four issue alerts that Ms. Kjose sent to certain Minnesota legislators in 2011.<sup>2</sup> The complaint also alleges that as a task force director, Ms. Kjose drafted model legislation and lobbied to get it passed.

In its response to the complaint, ALEC indicates that the value of staff time to prepare and send each issue alert is approximately \$30. The issue alerts provided by Complainant and those provided by ALEC indicate that issue alerts were sent by various ALEC staff members. The response confirms that four of the alerts sent in 2011 were from Ms. Kjose. Even assuming that the full cost of staff time for drafting the alert is included in the compensation paid to the staff member, and assuming a reasonable amount of time to draft the alert and a reasonable salary for the staff member, Ms. Kjose would not become a lobbyist based on the drafting and sending of issue alerts alone.

In its purest sense, communicating with an official takes the form of a direct interaction. However, such direct communication is not required and actions beyond the actual exchange of words between the individual and the official are included in the communication. If a person is paid to write a letter to officials to influence official action, the time spent writing the letter is a part of the communication.<sup>3</sup> Similarly, the Board has concluded that the creation of a website urging others to communicate with officials for the purpose of influencing a specific Minnesota administrative action is a communication that is included in the amount spent that can make an individual a lobbyist.<sup>4</sup>

Complainant is apparently arguing that all of the time Ms. Kjose spends drafting and editing model bills, researching and writing supporting papers and talking points, and preparing other materials<sup>5</sup> that *might* be used later in support of a direct communication with a Minnesota legislator should be counted as time spent communicating with Minnesota officials. However, these activities, undertaken with no particular Minnesota purpose, are significantly broader in scope than the activities the Board has previously included when deciding if an individual is a lobbyist.

The problem with this approach is that although it can be assumed that all of the work of an ALEC task force director is undertaken in furtherance of ALEC's overall mission, ALEC's overall mission is not to influence legislative action in Minnesota. It is to influence public attitudes and legislative action in the nation as a whole. With the exception of the Minnesota issue alerts,

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<sup>2</sup> ALEC's response also shows that Ms. Kjose sent one issue alert to Minnesota legislators in 2009 and no alerts in 2010. Although these years are outside the scope of the investigation, they demonstrate that Ms. Kjose's direct communication with Minnesota legislators over the years has been limited.

<sup>3</sup> In the Matter of a Complaint Regarding the Minnesota Licensed Beverage Association and others. [http://www.cfboard.state.mn.us/bdinfo/investigation/06\\_03\\_2014\\_Findings\\_Griffith\\_Ball\\_MLBA.pdf](http://www.cfboard.state.mn.us/bdinfo/investigation/06_03_2014_Findings_Griffith_Ball_MLBA.pdf). Last visited January 27, 2015

<sup>4</sup> In the Matter of the Complaint Regarding Coalition for Sensible Siting, and others. [http://www.cfboard.state.mn.us/bdinfo/investigation/04\\_03\\_2012\\_CSS\\_GWT.pdf](http://www.cfboard.state.mn.us/bdinfo/investigation/04_03_2012_CSS_GWT.pdf). Last visited January 27, 2015.

<sup>5</sup> For the purpose of this analysis, the Board assumes that these activities actually took place. Because the Board concludes that they are not within the scope of activities that constitute communicating with a Minnesota official, it is not necessary to determine the exact scope of an ALEC task force director's duties.



virtually all of a task force director's work is done in the abstract, without any specific Minnesota connection.

While some part of a task force director's work may eventually support a communication with a Minnesota legislator (if a legislator happens to attend a task force meeting or otherwise interacts with the task force director), most of the work of a task force director will never be used to support any communication with a Minnesota legislator. The nexus between the task force director's work and some future hypothetical communication with a Minnesota legislator therefore is insufficient to justify its inclusion in the scope of activities that would make a task force director a lobbyist.<sup>6</sup>

For the reasons discussed above, the Board does not adopt such a broad scope of activities to be included when determining if an individual meets the threshold of compensation to become a lobbyist. As a result, the Board concludes that Amy Kjose does not meet the compensation threshold to be a lobbyist in Minnesota.<sup>7</sup>

### **The criteria for determining whether an association is a principal**

An association that pays a lobbyist more than \$500 in a calendar year or that spends more than \$50,000 in a year on specified activities is a principal. Minn. Stat. § 10A.01, subd. 33. The Board concluded above that ALEC task force directors are not lobbyists. As a result, ALEC is a principal only if it spends more than \$50,000 in a year on the statutorily specified activities

The types of activities that are included to determine if the \$50,000 threshold is met are specified in Minnesota Statutes section 10A.04, subdivision 6, as follows:

all expenditures for advertising, mailing, research, analysis, compilation and dissemination of information, and public relations campaigns related to legislative action, administrative action, or the official action of metropolitan governmental units in this state

and

all salaries and administrative expenses attributable to activities of the principal relating to efforts to influence legislative action, administrative action, or the official action of metropolitan governmental units in this state.

In addition to listing the types of activities that can make an association a principal, the statute includes another important requirement. The activities must be "related to legislative action . . . in this state" or "to influence legislative action . . . in this state." *Ibid.*

To clarify the statute and to ensure that its application does not extend to communications in which the state may not have a substantially significant disclosure interest, the Board interprets the phrases "related to legislative action" and "to influence legislative action" to mean "for the purpose of influencing legislative action." This narrowing construction ensures that

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<sup>6</sup> Because the relationship between bill drafting or similar activities and communication with Minnesota legislators is so tentative in the immediate matter, the Board need not determine here exactly how close the nexus must be before an individual's actions are a part of the individual's communication with officials.

<sup>7</sup> The Board recognizes that Complainant has provided evidence that three Minnesota legislators attended ALEC events in 2010 and that this investigation has disclosed other instances of Minnesota legislators attending ALEC events. However, neither the information provided by Complainant nor the evidence disclosed by this investigation suggests that any single task force director had sufficient contact with Minnesota legislators to support a conclusion that the task force director was paid more than \$3,000 in a calendar year for that Minnesota communication.

communication that is merely *about* legislation or legislative action, but does not try to influence official action will not make an association a principal.

Equally important is the limiting clause "in this state," which the Board interprets as modifying the legislative action under examination. In other words, the association's activities need not occur "in this state," but those activities must be for the purpose of influencing Minnesota legislative action.

### **Is ALEC a principal?**

ALEC's mission is to work "to advance limited government, free markets, and federalism at the state level. . . ." In advancing that mission, ALEC task forces have "considered, written and approved hundreds of model bills on a wide range of issues;" bills that ALEC considers to be "model legislation that will frame the debate today and far into the future."<sup>8</sup>

Beyond drafting legislation, "ALEC staff provides research, policy analysis, scholarly articles, reference materials, and expert testimony on a wide spectrum of issues."<sup>9</sup> ALEC's website and its publications make it clear that ALEC's mission is national rather than uniquely targeted to any particular state. As a result, ALEC bears many similarities to any number of associations operating as so-called "think tanks" whose overall mission is to change public opinion and to support those who want to advance the principles espoused by the association. Likewise, ALEC bears similarities to other associations that create and urge the adoption of model legislation.

If a distinction is to be made between ALEC and other national "think tanks" or model-law-writing organizations, that distinction must be based on the association's purpose with respect to influencing Minnesota legislative action, not on the question of *who* develops the policies advanced by the association.

Clearly, ALEC spends more than \$50,000 per calendar year to advance its mission. The types of activities that ALEC undertakes to advance this mission include the same activities that can make an association a principal. However, to decide that ALEC is a principal, it is also necessary to conclude that ALEC's activities are for the purpose of influencing legislative action *in this state*.

ALEC itself acknowledges that part of its goal is "to ensure that each of its legislative members is fully armed with the information, research, and ideas they need to be an ally of the free-market system."<sup>10</sup> Ultimately, the only way for legislators to be such an ally is by passing legislation that advances ALEC's principles. In fact, ALEC's bylaws *require* it to work to influence legislative action. One of ALEC's stated purposes is "to disseminate model legislation and promote the introduction of companion bills in Congress and state legislatures."<sup>11</sup>

Although the evidence supports a conclusion that ALEC's primary purpose is the passage of state legislation in the various states and that all of its wide-ranging activities are in support of this primary purpose, such a conclusion is not sufficient to further conclude that ALEC's activities are for the purpose of influencing legislative action *in this state* as the definition of principal requires.

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<sup>8</sup> The quotes in this paragraph are from the ALEC website at <http://www.alec.org/about-alec/history/> and <http://www.alec.org/about-alec/history/> last visited January 27, 2015.

<sup>9</sup> ALEC Private Sector Membership brochure, Exhibit 2 to the complaint.

<sup>10</sup> *ibid.*

<sup>11</sup> ALEC Bylaws, Exhibit 3 to the complaint.

The Board concludes that an activity directed at all 50 states in the abstract does not constitute an activity conducted for the purpose of influencing legislation *in this state* even though it may in some instances have that effect. Before an association's activity will be included in the activities that may make the association a principal, there must be some specific connection to Minnesota. With ALEC, that nexus is insufficient.

The Board reaches this conclusion based on its construction of Chapter 10A and the requirement that it give meaning to all of the words of each statute. In this case, the phrase "in this state" will be meaningless if all the activities of every national advocacy association are included when deciding if that association is a principal. Under such an approach, national associations whose activities never actually influence specific Minnesota legislative action might still be found to be principals in Minnesota.

The Board recognizes that over the years a small number of Minnesota legislators have attended ALEC conferences. As noted, it is possible that the communication by individual ALEC employees with Minnesota legislators at such conferences would be included when deciding if an ALEC employee is a lobbyist. However, the fact that ALEC offers conferences which Minnesota legislators may attend does not result in the cost of each conference being an expenditure "to influence legislation in this state."

Based on the same analysis, the Board concludes that the creation by an association of a public website and of content published on that website does not make the association a principal when the site has no specific Minnesota nexus. To conclude otherwise would result in principal status being determined based on who visits the site, rather than on a determination of whether the site and its content were produced for the purpose of influencing legislative action in Minnesota.

For these reasons, the Board concludes that ALEC has not reached the \$50,000 threshold necessary to be a principal in Minnesota.

**Based on the investigation and the record in this matter, the Board makes the following:**

#### **Findings of Fact**

1. ALEC is an association organized as a nonprofit corporation.
2. ALEC's primary purpose is to promote its "free market" principles throughout the United States. It does this in various ways, including by producing model state legislation that, if adopted, would incorporate its principles into state law.
3. ALEC's activities are conducted on a national platform. Although ALEC attempts to be active in every state, its programs and activities have no specific Minnesota connection.
4. Much of ALEC's efforts are directed toward advancing its principles through changing public perceptions and through advocacy of legislative action in the various states.
5. ALEC spends more than \$50,000 in each calendar year on communications in the form of publications, model legislation, conferences, and other activities to advance its principles.

6. ALEC's efforts have no particular nexus with Minnesota. Rather, they are directed at all of the states generally.
7. In at least some cases, Minnesota legislators have attended ALEC conferences and introduced legislation that is based on ALEC model legislation.
8. Amy Kjose had minimal communication with Minnesota legislators in 2009 and 2011 in the form of issue alerts she sent by email.
9. It is possible that Amy Kjose may have had additional minimal communications with Minnesota legislators at one or more ALEC events.
10. Amy Kjose did not spend any of her own money to influence Minnesota legislative action.
11. The total compensation paid to Amy Kjose in any calendar year for communications with Minnesota legislators did not exceed \$3,000.

### **Conclusions of Law**

1. To become a lobbyist based on spending \$250 or more under Minnesota Statutes section 10A.01, subdivision 21(a)(2), only the spending of the individual's own money is considered.
2. Amy Kjose is not a lobbyist under section 10A.02, subdivision 21(a)(2) because she did not spend any of her own money for communications to influence legislative action in Minnesota.
3. Amy Kjose is not a lobbyist under section 10A.01, subdivision 21(a)(1) because she was not paid more than \$3,000 in a calendar year for communications to influence legislative action in Minnesota.
4. Because Amy Kjose is not a lobbyist, ALEC is not a principal based on spending more than \$500 in a calendar year to compensate a lobbyist.
5. Although ALEC spends more than \$50,000 per year to advance its principles through activities that include promotion of model legislation in the various states, ALEC does not specifically target Minnesota in such a way that its general spending constitutes spending for activities conducted for the purpose of influencing legislation in this state.
6. ALEC is not a principal based on its spending to advance its principles or to influence legislation in the fifty states generally.

### **Order**

The investigation of this matter is concluded and the complaint is dismissed.

    /s/ George A. Beck      
George A. Beck, Chair

    February 3, 2015      
Date

**Documents incorporated into these Findings by reference:**

Complaint of Common Cause Minnesota Regarding the American Legislative Exchange Council

Exhibits to the complaint

May 22, 2012, letter advising ALEC of the complaint

March 13, 2013, letter requesting information from ALEC

Response from ALEC, April 12, 2013

July 11, 2013, letter requesting information from ALEC

Response from ALEC, July 26, 2013

Letter to ALEC February 13, 2014

Response from ALEC March 10, 2014

## Referenced statutes

### 10A.01 Definitions

. . .

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;

. . .

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.

### 10A.04 Lobbyist reports.

Subd. 6. **Principal reports.** (a) A principal must report to the board as required in this subdivision by March 15 for the preceding calendar year.

(b) Except as provided in paragraph (d), the principal must report the total amount, rounded to the nearest \$20,000, spent by the principal during the preceding calendar year to influence legislative action, administrative action, and the official action of metropolitan governmental units.

(c) Except as provided in paragraph (d), the principal must report under this subdivision a total amount that includes:

(1) all direct payments by the principal to lobbyists in this state;

(2) all expenditures for advertising, mailing, research, analysis, compilation and dissemination of information, and public relations campaigns related to legislative action, administrative action, or the official action of metropolitan governmental units in this state; and

(3) all salaries and administrative expenses attributable to activities of the principal relating to efforts to influence legislative action, administrative action, or the official action of metropolitan governmental units in this state.

(d) A principal that must report spending to influence administrative action in cases of rate setting, power plant and powerline siting, and granting of certificates of need under section 216B.243 must report those amounts as provided in this subdivision, except that they must be reported separately and not included in the totals required under paragraphs (b) and (c).