

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

**In the matter of the Board inquiry regarding the  
Minnesota Council of Engineering Companies Citizens Fund et. al.**

**CONCILIATION AGREEMENT**

This agreement is entered into between the Minnesota Campaign Finance and Public Disclosure Board (the Board), the American Council of Engineering Companies of Minnesota (ACEC/MN), and the Consulting Engineers Citizens Fund (CECF) to resolve certain possible violations of Minnesota Statutes Chapter 10A, as further described in this agreement.

**Background**

In September, 2008, the Board received an anonymously submitted document that appeared to be a letter from the president of a Minnesota engineering company to the company's employees. The document described a previous solicitation by the employer on behalf of an entity named the "MCEC Citizen Fund". The letter indicated that 66 contributions had been received and that those contributions were reimbursed to the donors (up to \$50 per individual or \$100 per couple) through the state's political contribution refund program.

The letter indicated that the contributions were voluntary and went on to indicate that 98 percent of the donations were made without designation by the donor as to what party or candidate should receive the donor's contribution. The letter indicated that the donor could designate to whom the funds should go and that such a request would be accommodated.

The letter included a solicitation for a donation of \$50 per person or \$100 per couple. The letter directed employees to send their contributions to a staff member at one of the employer's offices.

As a result of receipt of the above described document, Board staff conducted research regarding the nature and operations of the MCEC Citizen Fund, which is not a political committee or fund registered with the Board.

In the course of its research, Board staff identified an organization variously referred to as MCEC and as ACEC/MN. Staff determined that ACEC referred to the American Council of Engineering Companies, a national organization supporting engineering companies. ACEC/MN referred to the American Council of Engineering Companies of Minnesota; the Minnesota affiliate of ACEC.

Other references were found including an internet site wherein ACEC/MN solicited donations to "the Consulting Engineers Citizens Fund", also known as "CECF".

As a result of the anonymously submitted document and staff research, the Board directed the Executive Director to initiate an inquiry into the nature and operations of the various entities described above. On October 24, 2008, letters of inquiry were sent to the president of the engineering company involved in the anonymously submitted document and to Mr. David Oxley

who had been identified as the Executive Director of the American Council of Engineering Companies of Minnesota.

Responses were received from Michael Kraemer, president of Short Elliot Hendrickson, Inc. and from Mr. Oxley.

Mr. Kraemer acknowledged that the anonymously submitted document was, in fact, a copy of a communication from him to the employees of SEH. In response to another part of the inquiry, Mr. Kraemer indicated that the MCEC Citizen Fund referred to in his letter was the same as the Consulting Engineers Citizen Fund referred to in the internet site materials of ACEC/MN.

Mr. Oxley responded on behalf of ACEC/MN. He indicated that a bank account exists with the account name Consulting Engineers Citizens Fund. He states that Consulting Engineers Citizens Fund, sometimes referred to as CECF, is the formal name of the entity that is the subject of the Board's inquiry. References to MCEC Citizens Fund or to MCECCF refer to the Consulting Engineers Citizens Fund.

Mr. Oxley indicated that CECF had been in operation since November, 1996, and that it had been set up by previous legal counsel to ACEC/MN.

Board staff met with Mr. David Oxley and Mr. Randolph Morris, lobbyist and legal counsel for ACEC/MN on December 15, 2008, to obtain additional information related to the operations of CECF. Additional facts disclosed at that meeting are incorporated into the Board Analysis section of this document and into the Agreement.

Mr. Morris also appeared before the Board in executive session on January 8, 2009, and presented testimony on behalf of ACEC/MN and CECF. In that testimony, Mr. Morris reiterated that CECF had been established by prior legal counsel and operated without change in its practices since its creation. He indicated that CECF had about \$12,000 remaining in its account, all of which could be identified to specific individual donors. He stated that CECF wished to return this money to the donors since it was now clear that CECF could not continue to make donations to candidates. Mr. Morris reported that CECF had frozen its operations as soon as it received notice of the Board's inquiry.

The Board directed the Executive Director to attempt to negotiate a conciliation agreement with ACEC/MN and CECF that would result in: (1) discontinuance of activities that may not be consistent with Minnesota Statutes Chapter 10A, (2) ensuring that such activities do not arise in the future with respect to ACEC/MN or any of its members, and (3) the voluntary payment of a civil penalty to settle any potential violations of Minnesota Statutes Chapter 10A.

### **Board Analysis**

The Board's inquiry disclosed evidence that ACEC/MN believed it was operating what is referred to as a "conduit fund" under Minnesota Statutes, Section 211B.15, subd. 16. Corporate political contributions are generally prohibited under Minnesota Statutes §211B.15, however, Section 211B.15, subd. 16, permits corporations to set up accounts known as "conduit funds." With a conduit fund, a general nonpartisan solicitation may be made to the corporation's employees. Employees may put money in the fund directly or by payroll deduction.

Under §211B.15, money in a conduit fund is always controlled by employee donor. The statute states that “. . . the employee *must* direct the contribution to candidates of the employee’s choice” [emphasis added]. The conduit fund is a depository and accounting system only and the employer never has control over the use of money placed in the fund.

In 1974, shortly after formation of the Board and enactment of Minnesota Statutes Chapter 10A, the Board was asked if conduit funds were required to register with and report to the Board. The Board responded by issuing Advisory Opinion No. 6. In that opinion, the employer set up a fund for employee political contributions. The employee could designate to which candidates the contributions must be transferred or could leave the designation up to the employer.

It was the opinion of the Board that the employer could collect and distribute employee contributions in cases where the employee designates to whom the contribution will be transferred. In such a case, the conduit fund fell under the definition of Minnesota Statutes, Section 211B.15, subd. 16, and was not required to register as a political committee or fund with the Board. However, if the employer collected undesignated contributions from employees and the employer made the decision as to which candidates would receive the proceeds of the contributions, the activities resulted in the establishment of a political committee or fund which was required to register with and report to the Board.

The Board has not issued advisory opinions on the subject subsequent to Advisory Opinion No. 6. By terms of the statutes in effect at the time, Advisory Opinion No. 6 expired two years after its issuance. However, it continues to be published by the Board as a statement of its position on the subject.

The Board has identified two contradictions between the operations of the Consulting Engineers Citizens Fund and the requirements to be a conduit fund. First, contributions to CECF were not limited to donations from employees of a single corporation. CECF is not a fund maintained by an employer strictly for its employees. Rather, CECF is coordinated by an industry support organization and it solicits from a large group of employees of engineering companies. Based on the letter from Mr. Kraemer and on materials from the ACEC/MN internet site, it also appears that contributions were solicited from the spouses of employees and potentially from the general public.

Second, CECF permits and apparently encourages allowing the fund operators to decide which candidates receive contributions. The letter from Mr. Kraemer indicates that 98% of donors from one particular employer in one year allowed the fund to make the designation. Delegation of that right to the fund operators is fatal to the classification of the fund as a conduit fund.

If CECF is a political fund, then it was required to register with and report to the Board. Chapter 10A provides no civil penalty for failure to register or report until after the Board sends the affected fund a certified letter notifying it of the registration and reporting requirement.

When CECF made contributions to candidates, it listed the underlying donors to whom each contribution should be attributed and requested that the recipient issue a political contribution refund receipt to each donor. This practice is characteristic of a conduit fund and has been recognized by the Board as statutorily permitted. Because CECF appeared to recipients of

contributions to be a conduit fund, there is no basis to support a finding of a violation by any recipient of a contribution made by or through CECF.

Information disclosed in the course of the investigation suggests that CECF made contributions to candidates that, when aggregated, were in excess of the limit on such contributions by a political fund. If such contributions were made with funds for which CECF determined the recipient, a violation of Minnesota Statutes Chapter 10A may have occurred.

In view of the fact that two chapters of Minnesota Statutes are at issue in this matter; one (Chapter 10A) under the Board's jurisdiction and the other (Chapter 211B) not, the Board determined that this matter should be resolved by agreement rather than by issuance of an order determining statutory rights and obligations.

### **AGREEMENT**

The American Council of Engineering Companies of Minnesota and the Consulting Engineers Citizens Fund, agree as follows:

1. The parties agree that the above statement of background is accurate and that its terms are a part of this agreement.
2. The Consulting Engineers Citizens Fund (CECF) was organized by engineering companies that were members of the American Council of Engineering Companies of Minnesota (ACEC/MN) in 1996. Mr. David Oxley was the Executive Director of ACEC/MN at that time. Mr. Randolph Morris, currently legal counsel for ACEC/MN was not legal counsel in 1996 and was not involved in the original formation of CECF.
3. It was the intention of the founding companies and of ACEC/MN that CECF would be a "conduit fund" as that term is used in Minnesota Statutes, Section 211B.15, subd. 16.
4. Minnesota Statutes, Section 211B.15, subd. 16, relates to solicitations directed to employees for donations into a nonpartisan fund, which the statute refers to as a "conduit fund". The statute sets forth certain requirements for solicitations to a conduit fund. All of the provisions refer to solicitations of "employees". There is no provision for solicitation of contributions from persons other than employees of the operator of the conduit fund. The statute also states that a solicitation must inform the employee that the employee *must* direct the contribution to the candidates of the employee's choice. [Emphasis added].
5. CECF acknowledges that some of the contributions it received were not designated for specific candidates and that under the Board position expressed in Advisory Opinion No. 6, it would have been required to register with and report to the Board, at least with respect to the undesignated contributions.
6. The Board notes, and CECF acknowledges, that CECF was not an employer plan since it solicited contributions from employees of a number of employers. Even though those employers were in the same profession, the plan could not be considered to be an employer plan. Additionally, CECF acknowledges that it solicited not only from employees, but also from spouses of employees.

7. ACEC/MN and CECF recognize that under the Board's interpretation of Minnesota Statutes CECF should have been registered with and reporting to the Board from the time it began receiving contributions since it was not a fund operated by an employer for its employees.
8. ACEC/MN and CECF wish to reach agreement with the Board to remedy any possible past violations, to disband and terminate CECF, and to ensure that any future similar activities by ACEC/MN or its members comply with the provisions of Minnesota Statutes Chapter 10A.
9. At the time of the Board's initial inquiry, CECF had approximately \$12,000 of donor funds remaining in its bank account. These funds consisted of small donations from individuals who had been advised by CECF or its participating employers that the donors would receive contribution refunds under Minnesota's political contribution refund program.
10. CECF had raised approximately \$40,000 in 2008 after a significant effort to increase participation. In years prior to 2008, its financial activity was approximately \$8,000 per year.
11. CECF agrees that it will provide to the Board bank records sufficient to document the amount on hand at the time that it became aware of this Board inquiry, November 19, 2008.
12. CECF will return all funds identified in item 9 to the original donors of those funds and will provide to the Board documentation sufficient to show that the refunds have been made and that they were made to the correct donors. After the Board is satisfied that this requirement has been met, documents provided under this section and section 11 will be returned to CECF under the provisions of Minnesota Statutes, Section 10A.02, subd. 11a(2).
13. After complying with sections 9 and 12 of this agreement CECF will close its bank account and cease all further operations. CECF will provide to the Board documentation showing that the Bank account has been closed.
14. ACEC/MN will prepare a letter to all companies that were involved in CECF by soliciting employees for contributions to CECF, advising the operators of CECF, providing lists to CECF, or in any other way. The letter will inform members of the termination of operations of CECF. Further, the letter will explain the reasons CECF cannot operate as a conduit fund and will set forth the options available to employers for fostering participation by their employees in the political process. The foregoing letter must be approved by the Board's Executive Director and legal counsel.
15. For a period of five years, ACEC/MN will notify the Board in writing if it becomes aware that any of its member companies expresses an interest in forming, or form a conduit fund so that the Board may ensure that such companies are not required to register with and report to the Board, or if they are required to register and report, that they do so.
16. ACEC/MN agrees that if it wishes to provide administrative support to any conduit fund operated by one of its members, it will seek advice from the Board in the form of an advisory opinion request to establish the extent to which it may be involved, if at all, in the operation of such a fund without causing the fund to become a political committee or


political fund that would be required to register with the Board.

17. ACEC/MN and the operators of CECF agree that they will pay a civil penalty in the amount of \$5,000 in lieu of the Board imposing sanctions for specific possible violations of Minnesota Statutes Chapter 10A. Payment shall be made in the form of a check payable to the State of Minnesota and shall be tendered within 30 days of the date of acceptance of this agreement by all parties.
18. The parties agree that this agreement does not constitute an admission by ACEC/MN or CECF of any violation of Minnesota Statutes, but is a compromise to resolve possible violations and ensure that violations do not occur in the future.
19. The parties understand and agree that some conduct of corporations in the operation of CECF may be governed by statutes outside of Chapter 10A, which is the only chapter under the Board's jurisdiction. Nothing in this agreement governs rights, obligations, or possible actions outside of those provided in Chapter 10A.
20. It is further understood and agreed that this Agreement is confidential until signed by all of the parties hereto. Once signed, the Agreement shall become a matter of public record, and any statutory requirements of confidentiality are waived and shall no longer apply other than as stated in section 12 hereof.
21. It is agreed by the parties that upon the Executive Director's certification of satisfactory completion of its terms, this Conciliation Agreement will be a bar to any civil proceeding under Minnesota Statutes Chapter 10A based on the facts underlying this inquiry.
22. Except where the terms of this agreement provide a different time limit, ACEC/MN and CECF will complete all of the requirements of this agreement within 90 days of the date of the Board's acceptance of the agreement.
23. The Board delegates to its Executive Director the authority to review documents submitted under this agreement and to certify to the Board compliance with the terms of the agreement. In the event that the Executive Director determines that the parties have not complied with the terms of this agreement, he shall bring the matter back to the Board in executive session for further Board direction or action.

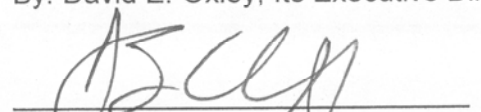
Dated: March 3, 2009

  
A. Hilda Bettermann, Chair

Dated: 3/23/09

  
American Council of Engineering Companies  
of Minnesota  
By: David E. Oxley, Its Executive Director

Dated: 3/23/09

  
Consulting Engineers Citizens Fund  
By: DAVID OXLEY  
Its: ADMINISTRATOR