

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

**Findings and Order in the Matter of the Complaint by
Margaret Romero Regarding Independent Expenditures made by Ezra Baer**

Evidence Used in These Findings

On November 10, 2010, the Campaign Finance and Public Disclosure Board (the Board) received a complaint from Margaret Romero regarding the failure of Ezra Baer to file reports for advertisements published in the *Hawley Herald*, *Barnesville Record-Review*, and *Clay County Union* newspapers. The advertisements expressly advocated in support of Jeff Backer for the office of state senate. Ms. Romero states in her complaint that the advertisements were published on October 18, October 25, and November 1, 2010. Attached to the complaint were two copies of the advertisement. Each advertisement contained the following disclaimer, "An Independent expenditure not approved by any candidate nor is any candidate responsible for it. Paid for by Ezra Baer, 10792 230th St North Hawley, MN 56549".

An individual who spends personal funds for an independent expenditure in support of or in opposition to a state level candidate is required to disclose the expenditure by filing a notarized Report of Independent Expenditures with the Board (Minnesota Statutes section 10A.20, subdivisions 6 and 6a). A Report of Independent Expenditures made by an individual is due on the next filing date on which reports by committees, funds, and party units are filed. During 2010, an independent expenditure made or incurred by a political committee, fund, or party unit on or before October 18, 2010, was reported on the pre-general-election Report of Receipts and Expenditures which was due on October 25, 2010. Expenditures made or incurred after October 18, 2010, were reported on the year-end Report of Receipts and Expenditures which was due on January 31, 2011. Board records show that Mr. Baer did not file a Report of Independent Expenditures by either date.

Prior to filing her complaint, Ms. Romero contacted staff about the advertisements and the filing requirements for individuals who make independent expenditures. Based on the conversation with Ms. Romero, staff sent Mr. Baer notification of the reporting requirement and a blank report on October 29, 2010. Because notification of the reporting requirement had already been sent to Mr. Baer, and because of uncertainty that a report was required until the year-end report due date, staff elected to temporarily delay starting an investigation of Ms. Romero's subsequent complaint pending the anticipated filing of a report by Mr. Baer. After the January 31, 2011, filing date passed, staff should have initiated an investigation of the complaint. The commencement of the investigation of the complaint and the notification to Mr. Baer of the complaint, however, did not take place until May 23, 2011.

With the notification of the complaint, staff asked Mr. Baer several questions concerning the independence of the expenditures, the publication and cost of the expenditures, and the reasons for failing to respond to staff's notification of the reporting requirement. Mr. Baer provided a written response to the complaint on June 3, 2011. Along with his response, Mr. Baer provided a Report of Independent Expenditures for the advertisements in question. However, the report was not notarized, as is required by statute. The report was returned to Mr. Baer for notarization on June 8, 2011. Mr. Baer filed a notarized report on June 15, 2011.

In his response, Mr. Baer acknowledged paying for the advertisements, and he confirmed that they ran in the newspapers listed in the complaint. Regarding the timing and frequency of the advertisements, Mr. Baer states that "...the ads ran for three weeks in all three newspapers

starting October 18 and ending November 1. The first week I placed 1 small ad in each newspaper at a cost of \$102 per paper and the other 2 weeks I placed a big ad in the paper at a cost of \$255 per ad per paper per week. ...I paid for all of the ads out of my own pocket.” The report of Independent Expenditures filed by Mr. Baer showed a total expenditure of \$1,836 for the advertisements.

Mr. Baer also stated in his response that he did not receive the Board’s notification of the reporting requirement for independent expenditures that was sent to him in October of 2010.

Board Analysis of Allegations

The complainant correctly recognized that the independent expenditures made by Mr. Baer must be reported to the Board. Individuals who wish to be involved in state campaigns beyond providing contributions of their money and time directly to a candidate are obligated to understand the reporting requirements in Chapter 10A that their actions might trigger. The amount spent in this instance, \$1,836, is not insignificant in a legislative race. Minnesota law provides the public with a right to know who attempts to influence the outcome of their elections, and no such disclosure was made in this case until Ms. Romero filed her complaint.

Based on the timing of the initial advertisements (October 18, 2010) Mr. Baer was required to file a report of independent expenditures with the Board by the pre-general-election report due date of October 25, 2010. Pre-election reports filed late are subject to a fine of \$50 per day to a maximum of \$1,000. By statute the late fee may start without notification to the filer.

In practice, however, the Board provides multiple notifications to registered committees both before and after a report due date in order to secure the timely filing of required disclosure. First, the Board provides a calendar of filing periods during an election year to all registered committees. Then, before each reporting period, the Board sends a mailed notice of the upcoming report due date to each registered committee. The notification includes a blank paper report to use if the committee does not file electronic reports. Next, an e-mail reminder is sent to all registered committees just prior to the filing period, followed by additional e-mail notifications sent to registered committees that failed to file by the due date. Finally, Board staff places a phone call to the treasurer of each registered committee that does not file by the due date, warning them that a late fee is being assessed.

As an individual, Mr. Baer was not registered with the Board, and therefore he did not receive the benefit of any notification prior to the reporting period due date for the independent expenditures. The notification that was sent to Mr. Baer of the reporting requirement occurred after the due date had already passed. Mr. Baer states that he did not receive the notification. Regardless, Board staff did not follow up on Mr. Baer’s failure to file a report in the manner that would have occurred if the report was due from a registered committee.

Giving consideration to Mr. Baer’s status as an individual who was operating without the benefit of the support and notifications the Board provides to registered committees, the Board will not seek the available penalty of \$1,000. The Order in these Findings provides for a penalty of \$100. The reduction in penalty is made with the understanding that Mr. Baer is now informed of the reporting requirements for independent expenditures, and the Board will expect that any future independent expenditure made by Mr. Baer will be timely disclosed.

Based on the above Summary of the Facts and the Relevant Statutes, the Board makes the following:

Findings Concerning Probable Cause

1. There is probable cause to believe that Ezra Baer failed to file, by the applicable due date, a Report of Independent Expenditures made in 2010 as required by Minnesota Statutes section 10A.20, subdivisions 6 and 6a.
2. There is no probable cause to believe that Mr. Baer intentionally violated the reporting requirements for independent expenditures.

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

Order

1. The Board orders Ezra Baer to pay a late fee of \$100 for failure to file a Report of Independent Expenditures by the October 25, 2010, due date, required in Minnesota Statutes section 10A.20, subdivisions 6 and 6a.
2. Mr. Baer is directed to forward to the Board \$100 by check or money order payable to the State of Minnesota within 30 days of receipt of this order.
3. If Ezra Baer does not comply with the provisions of this order, the Board's Executive Director may request that the Attorney General bring an action on behalf of the Board for the remedies available under Minnesota Statutes section 10A.34.
4. The Board investigation of this matter is hereby made a part of the public records of the Board pursuant to Minnesota Statutes section 10A.02, subdivision 11. This matter is concluded.

Dated: June 30, 2011

/s/ John Scanlon

John Scanlon, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes

Minnesota Statutes section 10A.20

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

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