

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

**Findings and Order in the Matter of the Complaint
by Steve Alan Landis regarding the Bill Davis for State Senate Committee**

Evidence Used in These Findings

On March 7, 2011, the Campaign Finance and Public Disclosure Board (the Board) received a complaint from Steve Alan Landis, Chair of Senate District 46 DFL, regarding the 2010 Year-End Report of Receipts and Expenditures filed for the Bill Davis for State Senate Committee (the Committee). Mr. Landis alleges that Bill Davis, who filed the report with the Board, violated Minnesota Statutes, section 10A.025, subdivision 2. This statute requires that an individual who files a statement with the Board certify that the information in the document is true and complete. An individual who certifies to be true a document knowing it contains false information, or knowingly omits required information, may be penalized by a civil penalty of up to \$3,000, and is subject to criminal prosecution for a gross misdemeanor.

The complaint noted that on the 2010 Year-End Report of Receipts and Expenditures Mr. Davis checked a box indicating that the report was a "No Change" report, and that the current cash balance of the committee was zero. A "No Change" report is only appropriate if a committee receives no contributions and makes no expenditures during a reporting period. In this case the reporting period was all of calendar year 2010. On the report Mr. Davis also identified himself as the treasurer of the Committee. The registration for the committee filed with the Board identified Carolyn White as the treasurer of the Committee.

The Bill Davis for Senate Committee registered with the Board on February 25, 2010. Mr. Davis did not file for office in 2010. A candidate who does not appear on the ballot is not required to file pre-election reports, and is only required to file the year-end report. Therefore, the 2010 year-end report, filed on January 31, 2011, was the first reporting period for the Committee.

Mr. Landis states in his complaint that Mr. Davis actively sought the DFL endorsement for state Senate District 46 in 2010. Mr. Landis contends that the Committee received contributions and made expenditures in support of that effort that required disclosure on the Year-End Report. In support of this allegation Mr. Landis provided with his complaint copies of commercially printed campaign flyers distributed by the Bill Davis for State Senate Committee. The complaint also alleges that at the party nominating convention for the 46th Senate District campaign posters and flyers in support of the Mr. Davis were distributed throughout the convention location. Mr. Landis also states that the Committee hosted a luncheon for delegates at the convention.

The Board notified Mr. Davis of the complaint on March 9, 2011. Mr. Davis was requested to identify the current treasurer of the Committee, and respond to a series of questions on contributions received and expenditures made by the Committee. To document his response Mr. Davis was also requested to provide the Board with the Committee's bank statements for 2010.

The Board received Mr. Davis's response on April 4, 2011. In response to a question on who holds the position of Committee treasurer Mr. Davis states, "Regarding my treasurer...she informed me several months ago that because of the serious illness of her husband she would need to step down as my treasurer. ...As a direct result, I will be totally responsible for all reporting going forward..." Based on this statement the Board modified the Committee registration to list Mr. Davis as the treasurer.

In response to questions regarding the activity of the Committee Mr. Davis states, "Because I was not successful with my bid for party endorsement, I discontinued all of my campaign activities immediately....With respect to my financial profile, my campaign account has remained dormant since April 2010. I had total campaign deposits of \$2,800.00, most contributions were less than \$100.00 with a couple exceptions. I loaned my campaign \$1,000.00, my sister donated \$500.00..." Mr. Davis also stated that he would reduce the cash balance below \$100 so that he would not have an ongoing reporting requirement "for an account that is actually dormant and inactive."

With his response Mr. Davis submitted an amended 2010 Year-End Report of Receipts and Expenditures that disclosed \$2,800 in receipts and \$2,525.24 in campaign expenditures for a remaining cash balance of \$274.76. The ending cash balance on the amended report matched the available funds listed on the December 2010 bank statement that Mr. Davis provided with his response.

On April 7, 2011, Board staff requested additional information on expenditures listed on the amended report, including the reporting of the luncheon alleged in the complaint, and how campaign material provided in the complaint was distributed. Mr. Davis was also asked to provide a copy of the bank statement for the month when the committee account was opened.

On April 18, 2011, the Mr. Davis provided a second written response and filed a second amended report. Mr. Davis also provided the initial bank statement for the Committee. The bank statement documented all of the contributions listed on the amended report.

The April 18, 2011, amended report disclosed two payments totaling \$375 for "Purchase, prepare & catering food". In explaining these payments and the Committee's activity at the nominating convention Mr. Davis states, "Regarding the alleged luncheon at Brooklyn Center High School, I had requested a room for meeting with my campaign team and meeting with supporters. After checking with the convention chair regarding the availability of a room, the only space available was a corner within the cafeteria. There was no charge for this space. ...All of the food items were purchased and prepared...on my campaigns (sic) behalf."

In response to the question on the method used to distribute campaign material Mr. Davis states, "With respect to the Meet and Greet notices, these items were hand distributed when I went door to door to visit over 100 delegates to this endorsing convention."

By letter dated May 4, 2011, Board staff requested Mr. Davis specifically address the complaint's allegation that he knowingly filed an inaccurate report with the Board. Mr. Davis responded on June 28, 2011.

In response to a question on why the Committee's contributions and expenditures were not initially included on the year-end report Mr. Davis states, "Because I didn't have all the documents for reporting on hand, and not knowing for sure if I needed to file a report on the other, I submitted this information to meet the filing deadlines with an expectation that I would seek clarification as soon as possible. Once I ascertained the correct information I would precede (sic) accordingly. Moreover, because I only ran for party endorsement, I was not totally sure I needed to file a yearend report. I viewed my seeking endorsement for state senator as being akin to seeking party endorsement for senate or congressional district chair or party treasurer or some other intra-party office, something I've done on numerous occasions without filing."

In response to a question as to why he filed the report with a no change status Mr. Davis provided a description of the circumstances in which the report was filed, "...The week leading up to the year end reporting, I was out or town on work related business. When I returned home, I learned

that my treasurers' husband was very ill...Furthermore, I learned that no effort was made on her part to file the year end annual report. However, I was not sure that it was necessary for me to file. I apparently misread this reporting requirement. Again by viewing this process as an intra-party proceeding, it appears that I may have miss-read (sic) the need to report."

Mr. Davis was asked to explain why he reported the Committee's cash balance as zero when there was \$274.76 in the bank account. Mr. Davis replied, "This mistake was done in error and an amended report was submitted to correct my annual yearend report. When the initial report was submitted, I did not have all the information in one place. And for all the reasons given above I simply submit (sic) the yearend report to avoid penalty for late submittal if in fact it was required of me. And, I had the expectation that if I did need to submit [a] full report, I would be contacted and asked to amend my errand (sic) report."

Board Analysis of Allegations

The complainant correctly recognized that the Bill Davis for State Senate Committee made reportable campaign expenditures during 2010 that were not disclosed on the Year-end Report of Receipts and Expenditures filed with the Board. The "no change" status and zero cash balance Mr. Davis initially reported could not be accurate on the first report filed by a committee that received contributions or made expenditures during the year. Mr. Davis has acknowledged that the initial report was inaccurate by filing two amended reports for 2010. After comparing the amended report filed on April 18, 2011, to the Committee's bank statements for 2010 the Board believes that accurate disclosure of the Committee's finances is now on file.

However, the complaint's allegation is that the report was inaccurate and that Mr. Davis certified and filed the report as a true document knowing it contained false information, or knowingly omitted required information.

The standard for finding that an individual "knowingly" filed a false or incomplete report is higher than establishing that a report was inaccurate. In determining if an individual knowingly filed a false or incomplete report the Board first looks for evidence that the individual was aware of the transaction(s) in question, and second, that the individual certified the report knowing that the report omitted or incorrectly stated the transactions.

From the evidence and Mr. Davis's response to the complaint it is clear that Mr. Davis knew that the Committee had received contributions and made expenditures. The major contributions to the committee were either donated by Mr. Davis, or by a family member. Mr. Davis was also aware that the Committee made expenditures because he personally distributed campaign literature printed at Committee expense, and because Mr. Davis was present at the party nominating convention where other campaign materials were displayed and the Committee provided food for delegates.

Mr. Davis's responses to the complaint also strongly indicate that he knew that the report did not include the contributions and expenditures of the Committee. Mr. Davis acknowledges that he decided to submit a report without contributions and expenditures because he did not have the financial records of the committee "on hand". Mr. Davis filed the report with "the expectation that if I did need to submit [a] full report, I would be contacted and asked to amend..."

In defending his action of certifying the accuracy of the report Mr. Davis provides that his treasurer had resigned, and that he found out that there was a report due shortly before the deadline. Mr. Davis did not have the financial records of the committee readily available when he completed the report, and was concerned about a late fee for filing after the deadline.

Additionally, Mr. Davis equates the Committee's efforts to receive the party endorsement to his efforts seeking a position as party officer. Mr. Davis contends that he was not sure if the Committee was required to file any report with the Board because he was not required to file a report when he ran for party officer positions.

The Board finds these explanations unpersuasive. The Board has no reason to doubt that Mr. Davis learned of the need to file the year-end report only shortly before the due date. However, as a state candidate, Mr. Davis is expected to have general knowledge of the requirements of Chapter 10A. Mr. Davis personally registered his Committee with the Board; an act that required him to open a bank account for the Committee's use. The Board mails to all registered committees informational bulletins on compliance and reporting issues. While the Report of Receipts and Expenditures was mailed to the treasurer of record Mr. Davis apparently did eventually receive notice of the need to file a report, and a copy of the report. If, after all of these indications, Mr. Davis still believed his campaign was only a party matter and doubted the need to file a report of the Committee's financial activities the obvious step was to call Board staff for confirmation of that interpretation *before* submitting an inaccurate report. Instead, Mr. Davis certified and submits the report without disclosing the Committee's contributions or expenditures and with an incorrect ending cash balance with the "expectation" that the Board would review the report and ask for needed amendments. This approach to the reporting requirements of Chapter 10A does not comply with the law's language or spirit.

A mitigating factor in Mr. Davis's action is that there was no apparent reason to conceal information that should have been included on the report. As reported on the amended report, and confirmed by the committee's bank statements, there is no evidence of prohibited contributions being received, or of excessive expenditures being made, by the Committee in 2010. The only apparent motivation to filing the initial year-end report with a no change status and a zero cash balance was to avoid late filing fees. The Board considered the financial activity of the Committee when setting the penalty in this matter.

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 the 2010 Year-End Report of Receipts and Expenditures filed by Bill Davis for the Bill Davis for State Senate Committee on January 31, 2011, was incomplete and inaccurate.
2. There is probable cause to believe that Bill Davis certified the 2010 Year-End Report of Receipts and Expenditures as a true and complete report knowing that the contributions, expenditures, and ending cash balance were incomplete or inaccurate, in violation of Minnesota Statutes, section 10A.025, subdivision 2.

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

Order

1. The Board orders Bill Davis to pay a civil penalty of \$1,000 for violation of Minnesota Statutes, section 10A.025, subdivision 2. The Board declines to seek criminal prosecution of a gross misdemeanor in this matter.
2. Mr. Davis is directed to forward to the Board \$1,000 by check or money order payable to the State of Minnesota within 30 days of receipt of this order.
3. If Mr. Davis 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: August 16, 2011

/s/ John Scanlon

John Scanlon, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes

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