

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

**Findings and Order in the Matter of the Complaint of Bob Murray
regarding House District 54A Republican Party of Minnesota and Citizens for (Mark)
Fotsch.**

The Allegations of the Complaint

On March 30, 2012, the Campaign Finance and Public Disclosure Board received a complaint from Bob Murray, but the complaint was not signed. At the May 1, 2012, meeting, the Board moved to accept the complaint even if Mr. Murray did not sign it and to lay it over to the next meeting. Mr. Murray came to the Board's offices and signed the complaint on May 4, 2012. To allow the investigation to be completed, the Board laid the matter over at its June and July meetings.

The complaint alleges that an anti-incumbent literature piece reported as an expenditure on the House District 54A Republican Party of Minnesota 2010 year-end report actually was an in-kind contribution to Citizens for (Mark) Fotsch because the same person was the treasurer for both the party unit and the campaign committee. This fact suggests that the literature piece was coordinated with the candidate and, therefore, was a contribution to the candidate.

The complaint also alleges that the anti-incumbent literature piece was not a party unit expenditure because the disclaimer on the piece stated that it was "prepared and paid for by local Republicans in in HD54A."

The Response to the Complaint

House District 54A RPM submitted a response to the complaint on June 4, 2012. The party unit submitted additional information in early July. Don Hewitt, the party unit treasurer in 2010, also gave a statement to the Board.

In its response, House District 54A RPM states that in 2010, Mike Boguszewski was the chair of House District 54A RPM and Lisa Belak was the deputy chair. Under the House District 54A RPM constitution, the chair and deputy chair also are deputy treasurers of the party unit. House District 54A RPM, however, did not list either Boguszewski or Belak as a deputy treasurer on the registration form that it filed with the Board.

In the spring of 2010, House District 54A RPM adopted a plan to contribute an initial \$1,000 to each RPM candidate for the state legislature and to then contribute an additional \$1,000 for every \$5,000 raised independently by the candidate. House District 54A RPM's budget committee decided that if there was money left in the party unit's contribution fund in October, the committee would make recommendations at that time about how to spend this money.

Mark Fotsch was the RPM candidate for the House District 54A seat. House District 54A RPM made two \$1,000 contributions to Citizens for (Mark) Fotsch. Mr. Hewitt was also the treasurer of Citizens for (Mark) Fotsch.

In October 2010, House District 54A RPM had money left in its treasury. The budget committee prepared two options for spending this money to present at the next party unit meeting. As the party unit treasurer, Mr. Hewitt was a member of the budget committee and had participated in the committee's preparation of the initial budget in early 2010. Mr. Hewitt, however, did not attend the October 2010 meeting where the budget committee developed the recommendations for spending the remaining party unit money.

House District 54A RPM met on October 13, 2010. When the meeting got to the agenda item about spending additional money, Ms. Belak "asked to pause the meeting . . . [and] clearly stated that any candidates or members of candidate campaigns needed to leave the room." Ms. Belak then "explained the need for separation between the BPOU and the campaigns and clarified that there could be no . . . coordination of efforts." Mr. Hewitt, along with several others, left the room.

While Mr. Hewitt was gone, the party unit decided to spend approximately \$4,500 on an anti-incumbent literature piece that would be mailed to undecided voters in the district. The piece was mailed on October 27, 2010, and stated that "[t]his is an independent expenditure not approved by any candidate or candidate's committee." Mr. Hewitt never suggested that the party unit do this mailing nor knew that it was going to take place. The literature piece was designed by Ms. Belak and printing and mailing were arranged by Mr. Boguszewski.

When Mr. Hewitt prepared the party unit's 2010 year-end report, he reported the cost of the anti-incumbent literature piece as an expenditure. For several years, House District 54A RPM had mailed a get-out-the-vote literature piece just before the election. Mr. Hewitt believed that the bills the party unit received for the anti-incumbent literature piece were for a get-out-the-vote piece similar to those that had been sent in the past. Consequently, Mr. Hewitt reported those costs as expenditures on the year-end report.

Board Analysis

Initially, the complaint alleges that the anti-incumbent literature piece was not a party unit expenditure because the disclaimer says that it was "prepared and paid for by local Republicans in House District 54A." All evidence in the record, however, shows that this mailing was a party unit expenditure. Whether the party unit used the correct language in its disclaimer is a question governed by Minnesota Statutes section 211B.04. The Board has no jurisdiction to resolve questions arising under chapter 211B.

The complaint also alleges that the anti-incumbent literature piece could not have been an independent expenditure because Don Hewitt was the treasurer for both House District 54A RPM and Citizens for (Mark) Fotsch and, thus, there had to have been coordination between

the party unit and the candidate. An expenditure cannot be independent when coordination of effort exists.

Minnesota Statutes section 10A.01, subdivision 18, provides that an independent expenditure is “an expenditure expressly advocating the election or defeat of a clearly identified candidate, if the expenditure is made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, any candidate or any candidate’s principal campaign committee or agent.”

In its advisory opinions, the Board has emphasized that whether coordination of effort exists is a question of fact. The Board also has clearly stated that there must be a high wall of separation between the party unit and its candidates if the party unit’s expenditures are to qualify as independent expenditures.

Here, Mr. Hewitt was the treasurer of both Mark Fotsch’s campaign committee and the party unit. This fact raises the question of whether there was coordination of effort in this case.

But other facts in the record show that House District 54A RPM took several steps to separate Mr. Hewitt from the decision-making process for the anti-incumbent literature piece. Mr. Hewitt did not participate in the budget committee meeting where the piece was proposed. He was asked to leave the party unit meeting where the literature piece was approved and he did, in fact, leave this meeting. The cost of the literature piece was authorized by Mr. Boguszewski and Ms. Belak in their capacities as deputy treasurers of the party unit. Taken together, these facts show that there was sufficient separation between the party unit and Mr. Hewitt in this case and that there was no coordination of effort between House District 54A RPM and Citizens for (Mark) Fotsch with regard to the anti-incumbent literature piece. The anti-incumbent literature piece therefore was an independent expenditure.

Because the anti-incumbent literature piece was an independent expenditure, House District 54A RPM should have reported this expense on the independent expenditure schedule of its year-end report instead of on the expenditure schedule. When a party unit remedies a reporting violation related to the misclassification of an expenditure within 10 days of being ordered by the Board to do so, the statutes do not provide for a civil penalty. Because Mr. Hewitt did not know about the independent expenditure, one of the individuals who was deputy treasurer in 2010 must sign the affidavit of independent expenditures for the amended 2010 year-end report.

Finally, Minnesota Statutes section 10A.14, subdivision 2, requires a party unit to include the name, address, and e-mail address of any deputy treasurers on its registration form. Here, House District 54A RPM did not include this information on the registration form in effect in 2010. To correct this violation, House District 54A RPM is ordered to update its current registration to include the required information about anyone currently serving as deputy treasurer of the party unit.

Based on the evidence before it and the above analysis the Board makes the following:

Findings Concerning Probable Cause

1. There is no probable cause to find that the anti-incumbent literature piece was not an independent expenditure.
2. There is probable cause to find that House District 54A Republican Party of Minnesota incorrectly reported the cost of the anti-incumbent literature piece as an expenditure instead of an independent expenditure on its 2010 year-end report.
3. There is probable cause to find that House District 54A Republican Party of Minnesota did not list the required contact information for its deputy treasurers on its 2010 registration form.

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

ORDER

1. Within 10 days of the date of this order, House District 54A Republican Party of Minnesota must file an amended 2010 year-end report that reclassifies the cost of the anti-incumbent literature piece as an independent expenditure. An individual who was deputy treasurer in 2010 must sign the affidavit of independent expenditures.
2. House District 54A Republican Party of Minnesota is ordered to update its current registration form to include the name, address, and e-mail address of anyone currently serving as deputy treasurer of the party unit.
3. The Board investigation of this matter is concluded and hereby made a part of the public records of the Board pursuant to Minnesota Statutes section 10A.02, subdivision 11.

Dated: August 7, 2012



Greg McCullough, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes

Minn. Stat. § 10A.01, subd. 18. Independent expenditure. “Independent expenditure” means an expenditure expressly advocating the election or defeat of a clearly identified candidate, if the expenditure is made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, any candidate or any candidate’s principal campaign committee or agent. An independent expenditure is not a contribution to that candidate. An independent expenditure does not include the act of announcing a formal public endorsement of a candidate for public office, unless the act is simultaneously accompanied by an expenditure that would otherwise qualify as an independent expenditure under this subdivision.

Minn. Stat. § 10A.14, subd. 2. Form. The statement of organization must include:

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(4) the name, address, and e-mail address of the treasurer and any deputy treasurers.

Minn. Stat. § 10A.17, subd. 1. Authorization. A political committee, political fund, principal campaign committee, or party unit may not expend money unless the expenditure is authorized by the treasurer or deputy treasurer of that committee, fund, or party unit.