

**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 unreported transactions**

The Allegations of the Complaint

On May 1, 2012, the Campaign Finance and Public Disclosure Board accepted a complaint from Bob Murray. This complaint alleges that the 2010 and 2011 year-end Reports of Receipts and Expenditures filed by the House District 54A Republican Party of Minnesota fail to list the cost of transportation to the annual Twins game fundraisers as either an expenditure or a contribution. The bus company that provided the transportation is not registered with the Board. Consequently, if the transportation expenses were contributions from the bus company, they were contributions made without the disclosure required from an unregistered association. The complaint also alleges that the party unit's 2011 year-end report fails to list the cost of the Twins tickets for that year's fundraiser as an expenditure.

During the investigation, staff discovered that on February 12, 2010, the party unit chair, Michael Boguszewski, wrote a check from the party unit's account to "Cash" for \$1,800 and then cashed that check. On March 17, 2010, Mr. Boguszewski deposited \$1,800 in cash into the party unit's account. Neither transaction was included on the party unit's 2010 reports. The Board expanded its investigation to determine whether Mr. Boguszewski's withdrawal of the party unit funds was a violation of Chapter 10A.

The Investigation

House District 54A RPM submitted a response to the complaint on June 4, 2012. The party unit submitted additional information in early July 2012. Shawn Egli, the party unit treasurer in 2011; Don Hewitt, the treasurer in 2010; and Mr. Boguszewski also gave statements to the Board.

In its response, House District 54A RPM states that in 2010 and again in 2011, the party unit sold tickets to a Twins game as a fundraiser. In both 2010 and 2011, an individual who worked for a bus company donated the services of a coach bus to House District 54A RPM to transport people to the Twins games.

House District 54A RPM states that in both 2010 and 2011, "the individual who actually arranged for the transportation was invoiced by the bus company and sent a check directly to the bus company." Consequently, House District 54A RPM never received any paper records of the transportation transactions. The party unit further states that because "the 'inputs' and 'outputs' for the year-end reconciliation matched . . . there was no 'flag' that the entry [related to the bus transportation] had been missed." House District 54A RPM therefore claims that the failure to report the bus transportation was an oversight in both 2010 and 2011.

Bus company invoices show that in 2010, the bus company employee paid \$502 for the bus rental and in 2011, he paid \$300. The bus company provided a statement showing that the price charged for the transportation in both years was consistent with market rates, bus availability, dispatch location, and the company's discount policies for employees and repeat customers. The Board's investigation disclosed that bus service charges vary greatly and that those charged by the bus company here were generally within the expected range.

In its response, House District 54A RPM also explains that in 2010, it bought the tickets for the baseball game fundraiser directly from the Twins and then resold the tickets over the summer months. The party unit's 2010 year-end report lists a payment to the Minnesota Twins for \$905. In 2011, Mr. Hewitt charged the Twins tickets on his personal credit card. The party unit again sold the tickets over the summer months. When all the tickets were sold, the party unit chair wrote Mr. Hewitt a check for \$1,300 to reimburse him for the cost of the Twins tickets.

In his statement, Mr. Egli said that when he prepared the party unit's 2011 year-end report, he subtracted the cost of the Twins tickets from the total amount that the party unit had received from the sale of the tickets. He then included this net amount in the unitemized contribution section on the 2011 year-end report. Mr. Egli did not report the cost of the Twins tickets or the payment to Mr. Hewitt as expenditures. When he signed the 2011 report, Mr. Egli believed that he had correctly reported the Twins ticket transactions.

The House District 54A RPM by-laws state that the party unit chair is also a deputy treasurer. Mr. Boguszewski, in his capacity as party unit chair, therefore had access to the party unit bank account. He also had a debit card and a checkbook for that account.

The Board obtained bank records for the party unit and for Mr. Boguszewski. The party unit's records show that on February 12, 2010, Mr. Boguszewski wrote a check to "Cash" for \$1,800 from the party unit's bank account and then cashed this check. Mr. Boguszewski's bank records show that on that same day, he deposited \$4,300 in cash into his business account. Before this deposit, Mr. Boguszewski's business account had a balance of \$271.74.

On February 16, 2010, Mr. Boguszewski made a \$4,100 payment from the business account to New York University, where his son was a student. Mr. Boguszewski also made several other payments from his business account on that same day. After Mr. Boguszewski paid New York University and the other bills, his business account had a negative balance for the rest of the month.

In February 2010, Mr. Boguszewski had access to four other accounts at his bank. Three of these accounts had negative balances during the month of February 2010 and the fourth account had a balance of less than \$200. On March 4, 2010, Mr. Boguszewski cashed a \$12,106.62 check payable to him from an Atlanta bank. He deposited these funds in varying amounts into the five bank accounts to which he had access.

Mr. Hewitt stated that during the first part of March, he reconciled the party unit's February bank statement and saw the \$1,800 withdrawal. Mr. Hewitt asked Mr. Boguszewski why he had withdrawn the money. Mr. Hewitt said that Mr. Boguszewski explained that he wanted to have some cash on hand for expenses related to the party unit's upcoming March convention because his party unit debit card wasn't working properly. Mr. Hewitt said that he told Mr. Boguszewski that Mr. Boguszewski did not need to have any cash on hand and that Mr. Boguszewski should immediately return the money to the party unit account.

Mr. Boguszewski's bank records show that on March 17, 2010, at 2:29 p.m., he withdrew \$2,000 in cash from his business account. The party unit's bank records show that at 2:46 p.m. that same afternoon, Mr. Boguszewski deposited \$1,800 in cash into the party unit's account. Map records show that the two banks are located in the metropolitan area 1.12 miles apart.

In his statement, Mr. Boguszewski said that in February 2010, the party unit "anticipated convention costs of a little over \$1,400." Mr. Boguszewski further stated that it wasn't always convenient for him to use the party unit checkbook to pay for party unit expenses because he "didn't always carry that checkbook with [him]." Mr. Boguszewski also said:

In February of 2010 I withdrew \$1,800 from the Republican HD 54A account for the express purpose of paying for expenses of operating the BPOU. These included supplies, printing, postage, rental space for meetings, cost of refreshments at meetings and so on.

Mr. Boguszewski stated that he believed that withdrawing these funds "would be more efficient and feasible than using the ATM card associated with the 54A account because that card had failed on numerous occasions."

House District 54A RPM's approved budget shows that the party unit planned to spend \$1,145 on its 2010 convention. The party unit's bank records show that on January 28, 2010, Mr. Boguszewski used a check to pay the \$305 rental fee for the convention site. The party unit's reports and bank records also show that someone other than Mr. Boguszewski was reimbursed for purchasing food for the convention. The bank records and the party unit's year-end report further show that from February 1, 2010, until March 8, 2010, someone used a party unit debit card five times to pay \$227.03 in supply and printing expenses related to the convention. A party unit debit card was used an additional 21 times in January and February 2010 to pay party unit expenses such as postage, printing, and refreshments. The party unit's reports do not list any payments to Mr. Boguszewski to reimburse him for party unit expenses incurred during the first two months of 2010 and he is not listed as an itemized contributor to the party unit.

Mr. Boguszewski explained that it was not unusual or unduly worrisome to him for his personal accounts to run negative balances during this time because he was working as a consultant and "[t]he pattern of [his] reimbursement for [his] consulting services was often a feast or famine type of cycle." Mr. Boguszewski feels that when it comes to proving that the \$4,300 deposit did not include any of the party unit funds, he is "in the position of trying to prove a negative." Mr. Boguszewski said that in last months of 2009 and the first months of 2010, he cashed checks

paying for his consulting services, took a distribution from his retirement account, sold family jewelry, received cash from his son's grandmother earmarked for college tuition, cashed in life insurance policies, and frequently kept \$1,000 to \$2,000 in cash available at his home. Mr. Boguszewski stated that the cash in the \$4,300 deposit could have come from any one of these sources. Mr. Boguszewski offered to look for documentation of these other sources of funds but did not know if any still existed. As of the date of the Board hearing on this matter, Mr. Boguszewski had not provided any additional documentation.

Board Analysis

The Board has the authority to investigate all reports filed with it under Minnesota Statutes, Chapter 10A. When the Board accepts a complaint, it exercises that authority to investigate all possible violations of Chapter 10A that might arise from the conduct alleged in the complaint or from the reports under review regardless of whether the complainant clearly and specifically raised those violations in the complaint.

The first issue raised in the complaint is whether House District 54A RPM properly listed all financial transactions related to the Twins fundraisers on its 2010 and 2011 year-end reports. The purpose of Minnesota Statutes Chapter 10A is to promote accurate disclosure of political party unit financial transactions so that the public can know how the party unit is raising and spending money. To further this goal, Minnesota Statutes section 10A.20, subdivision 3, requires a political party unit to disclose on its campaign finance reports the name and address of anyone who contributes more than \$100 to the party unit. This statute also requires the party unit to report the sum of all contributions made to the party unit. Contributions include in-kind donations given to the party unit. The party unit also must report the name and address of any person to whom it paid more than \$100 and must state the purpose of the expenditure.

In this matter, several transactions related to the Twins game fundraisers were not listed on the party unit's 2010 and 2011 reports. For example, on its 2010 and 2011 reports, House District 54A RPM did not list the cost of the bus transportation to the Twins games as an in-kind contribution from the bus company employee or as an in-kind expenditure. The 2011 year-end report does not list the payment to Mr. Hewitt to reimburse him for the initial cost of the Twins tickets. Finally, the 2011 report does not list the total amount that individuals contributed to the party unit to buy the Twins tickets. Given these omissions, there is probable cause to find that House District 54A RPM violated Minnesota Statutes section 10A.20, subdivision 3, by failing to list all transactions related to the Twins game fundraisers on its 2010 and 2011 reports.

A political party unit can remedy a violation of the reporting requirements in Chapter 10A by amending its report. In the present case, these findings will serve as amendments to the House District 54A RPM 2010 and 2011 reports that disclose the transactions related to the Twins game fundraisers. When a reporting violation related to the omission of a contribution or an expenditure is timely cured by an amendment to the report, the campaign finance laws do not provide for the imposition of a civil penalty.

The second issue raised by the complaint is whether the bus transportation to the Twins game was a contribution made by an unregistered association without the required disclosure. The record shows that the bus company employee paid the entire cost of the transportation to the Twins game in both 2010 and 2011. The investigation also shows that amount charged by the bus company for the transportation was consistent with the market rates for the service. Consequently, there was no contribution from the bus company to the party unit in either 2010 or 2011 that required underlying disclosure.

The next issue raised in the investigation is whether Mr. Boguszewski's withdrawal of funds from the party unit's bank account violated Chapter 10A. Minnesota Statutes section 10A.11, subdivision 5, provides that a party unit's funds may not be commingled with the personal funds of any of its officers.

The record shows that on the same day that Mr. Boguszewski cashed a check for \$1,800 from the party unit bank account, he deposited \$4,300 into his business bank account. The fact that the withdrawal from the party unit's account and the deposit into Mr. Boguszewski's business account occurred on the same day strongly suggests that Mr. Boguszewski deposited the party unit funds into his personal account. The fact that Mr. Boguszewski withdrew money from his business account only minutes before he replaced the money withdrawn from the party unit account also is evidence that he mixed the party unit funds with his own money. Finally, even if the Board were to accept Mr. Boguszewski's claim that he did not deposit the party unit money into his personal bank account, Mr. Boguszewski does not maintain that he kept the party unit funds separate from the personal funds that he kept at home. Given these facts, there is probable cause to find that Mr. Boguszewski commingled party unit funds with his personal funds.

Minnesota Statutes section 10A.17, subdivision 3a, provides that a party unit may not lend money "to anyone for purposes not related to the conduct of a campaign." Mr. Boguszewski claims that he withdrew the \$1,800 from the party unit bank account to pay party unit expenses. Mr. Boguszewski also maintains that he needed cash for these expenses because he did not always carry the party unit checkbook and the party unit debit card was not working properly.

Mr. Boguszewski's claims, however, are not credible. The record shows that the party unit had budgeted less than \$1,200 for its convention expenses and that Mr. Boguszewski already had used the party unit checkbook to pay \$305 of these expenses. In addition, a party unit debit card was used five times to pay just over \$200 of the convention expenses and used an additional 21 times during this period to pay other party unit bills. The party unit reimbursed someone other than Mr. Boguszewski for food provided at the convention. Finally, the party unit reports show that Mr. Boguszewski did not pay any convention expenses or, at best, paid for \$100 or less of those expenses and contributed them to the party unit. This evidence shows that Mr. Boguszewski did not need or use \$1,800 in cash to pay the party unit's expenses.

Instead, the evidence in the record supports the conclusion that Mr. Boguszewski used the \$1,800 for personal purposes. Mr. Boguszewski's accounts had very low or negative balances at the time he withdrew the money from the party unit account. On the same day that he withdrew the party unit

funds, Mr. Boguszewski deposited \$4,300 in cash into his business account. Although Mr. Boguszewski argues that the \$4,300 came from sources other than the party unit funds, there is no credible evidence in the record to support this claim. Further, shortly after Mr. Boguszewski made the \$4,300 deposit, he paid several bills, including his son's college tuition, which left his account with a negative balance for the rest of February. These facts, along with the evidence showing that Mr. Boguszewski did not use the withdrawn funds to pay party unit expenses, establish probable cause to find that Mr. Boguszewski, in his capacity as party unit chair, loaned himself party unit funds for personal purposes.

Minnesota Statutes section 10A.11, subdivision 7, provides that a person who knowingly commingles party unit funds with personal funds is subject to a civil penalty imposed by the Board of up to \$1,000. Minnesota Statutes section 10A.17, subdivision 5, provides that anyone who knowingly lends party unit funds to someone for personal purposes is subject to a civil penalty of up to \$3,000. A person does not need actual knowledge of these statutes to have a knowing violation. Instead, it is sufficient that the person knowingly took the actions at issue.

In this matter, the record provides more than sufficient evidence to find that Mr. Boguszewski knowingly mixed the party unit funds with his personal funds and knowingly used party unit funds for personal purposes. Mr. Boguszewski therefore knowingly violated both Minnesota Statutes section 10A.11, subdivision 5, and Minnesota Statutes section 10A.17, subdivision 3a. The Board imposes a civil penalty of \$2,000 on Mr. Boguszewski for these two violations.

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

Findings Concerning Probable Cause

1. There is probable cause to find that the House District 54A Republican Party of Minnesota 2010 and 2011 year-end Reports of Receipts and Expenditures did not include all contributions and expenditures related to the Twins fundraisers in those years.
2. There is no probable cause to find that the bus company made any contributions to House District 54A RPM.
3. There is probable cause to find that Michael Boguszewski commingled House District 54A RPM funds with his personal funds.
4. There is probable cause to find that Michael Boguszewski, in his capacity as deputy treasurer of House District 54A RPM, lent party unit funds to himself for personal purposes.

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

ORDER

1. These findings shall serve as amendments to the House District 54A Republican Party of Minnesota 2010 and 2011 reports that disclose the transactions related to the Twins game fundraisers.
2. A civil penalty of \$2,000 is imposed on Michael Boguszewski for the improper commingling of party unit funds with his personal funds and for the loan of party unit funds to himself for personal purposes. Payment of the penalty must be made by sending a check payable to the State of Minnesota to the Board within 30 days of the date of this order.
3. The investigation of this matter is hereby made a party of the public records of the Board pursuant to Minnesota Statutes section 10A.02, subdivision 11, and upon payment of the civil penalty imposed herein, this matter is concluded.

Dated: March 5, 2013

/s/ Andrew M. Luger

Andrew M. Luger, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes

Minn. Stat. § 10A.11, subd. 5. Commingling prohibited. A political committee, principal campaign committee, or party unit may not commingle its funds with personal funds of officers, members, or associates of the committee.

. . . .

Subd. 7.**Penalty.** A person who knowingly violates this section is subject to a civil penalty imposed by the board of up to \$1,000.

Minn. Stat. § 10A.17, subd. 3a. Personal loans. A principal campaign committee, political committee, political fund, or party unit may not lend money it has raised to anyone for purposes not related to the conduct of a campaign.

. . . .

Subd. 5.**Penalty.** A person who violates subdivision 2 is subject to a civil penalty imposed by the board of up to \$1,000. A person who knowingly violates subdivision 3a or 4 or falsely claims that an expenditure was an independent expenditure is guilty of a gross misdemeanor and subject to a civil penalty imposed by the board of up to \$3,000.

Minn. Stat. § 10A.20, subd. 3. Contents of report. (c) The report must disclose the sum of contributions to the reporting entity during the reporting period.

. . . .

(b) The report must disclose the name, address, and employer, or occupation if self-employed, of each individual or association that has made one or more contributions to the reporting entity, including the purchase of tickets for a fund-raising effort, that in aggregate within the year exceed \$100 for legislative or statewide candidates or ballot questions, together with the amount and date of each contribution, and the aggregate amount of contributions within the year from each source so disclosed. A donation in kind must be disclosed at its fair market value. An approved expenditure must be listed as a donation in kind. A donation in kind is considered consumed in the reporting period in which it is received. The names of contributors must be listed in alphabetical order. Contributions from the same contributor must be listed under the same name. When a contribution received from a contributor in a reporting period is added to previously reported unitemized contributions from the same contributor and the aggregate exceeds the disclosure threshold of this paragraph, the name, address, and employer, or occupation if self-employed, of the contributor must then be listed on the report.

(c) The report must disclose the sum of contributions to the reporting entity during the reporting period.

. . . .

(g) The report must disclose the name and address of each individual or association to whom aggregate expenditures, including approved expenditures, have been made by or on behalf of the reporting entity within the year in excess of \$100, together with the amount, date, and purpose of each expenditure and the name and address of, and office sought by, each candidate on whose behalf the expenditure was made, identification of the ballot question that the expenditure was intended to promote or defeat, and in the case of independent expenditures made in opposition to a candidate, the candidate's name, address, and office sought. A reporting entity making an expenditure on behalf of more than one candidate for state or legislative office must allocate the expenditure among the candidates on a reasonable cost basis and report the allocation for each candidate.

(h) The report must disclose the sum of all expenditures made by or on behalf of the reporting entity during the reporting period.

Minn. Stat. § 10A.27, subd. 13. Unregistered association limit; statement; penalty.

(a) The treasurer of a political committee, political fund, principal campaign committee, or party unit must not accept a contribution of more than \$100 from an association not registered under this chapter unless the contribution is accompanied by a written statement that meets the disclosure and reporting period requirements imposed by section 10A.20. This statement must be certified as true and correct by an officer of the contributing association. The committee, fund, or party unit that accepts the contribution must include a copy of the statement with the report that discloses the contribution to the board. This subdivision does not apply when a national political party contributes money to its affiliate in this state.

(b) An unregistered association may provide the written statement required by this subdivision to no more than three committees, funds, or party units in a calendar year. Each statement must cover at least the 30 days immediately preceding and including the date on which the contribution was made. An unregistered association or an officer of it is subject to a civil penalty imposed by the board of up to \$1,000, if the association or its officer:

(1) fails to provide a written statement as required by this subdivision; or

(2) fails to register after giving the written statement required by this subdivision to more than three committees, funds, or party units in a calendar year.

(c) The treasurer of a political committee, political fund, principal campaign committee, or party unit who accepts a contribution in excess of \$100 from an unregistered association without the required written disclosure statement is subject to a civil penalty up to four times the amount in excess of \$100.