

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

**FINDINGS, CONCLUSIONS, AND ORDER IN THE MATTER OF THE COMPLAINT OF BRIAN WOJTALEWICZ REGARDING TIM MILLER, CITIZENS FOR TIM MILLER, SOUTHERN MINNESOTA BEET SUGAR COOPERATIVE PAC, AND RENVILLE COUNTY REPUBLICAN PARTY OF MINNESOTA**

**1. Background**

On October 10, 2016, the Campaign Finance and Public Disclosure Board received a complaint submitted by Brian Wojtalewicz regarding Tim Miller, Citizens for Tim Miller (the Miller committee), the Southern Minnesota Beet Sugar Cooperative PAC (SMBSC PAC), and the Renville County Republican Party of Minnesota (Renville RPM). The Miller committee is the principal campaign committee of Tim Miller for the seat in the house of representatives for district 17A. SMBSC PAC is a political fund registered with the Board and affiliated with the Southern Minnesota Beet Sugar Cooperative. Renville RPM is a party unit registered with the Board.

The complaint describes a contribution of \$5,000 that Renville RPM reported receiving from SMBSC PAC on July 18, 2016, and a contribution of \$4,500 that Renville RPM reported making to the Miller committee on the same day.

Based on the financial status of Renville RPM in July and on the reported dates of the SMBSC PAC and Miller committee transactions, the complaint claims that “the timing and sequence of these transactions make the illegal ‘wash’ quite transparent.” The complaint also alleges that the contribution by SMBSC PAC was earmarked for the Miller committee in violation of Minnesota Statutes section 10A.16. Based on the claim that SMBSC PAC “washed” the contribution by passing it through Renville RPM, the complaint argues that the effect of the transactions is that “SMBSC has contributed \$5,000 to the Tim Miller committee. This is \$4,000 above the legal limit of \$1,000.”

The Board chair found that the complaint was sufficient to state a prima facie violation and the Board made a probable cause determination at its meeting on November 10, 2016. Both Renville RPM and SMBSC PAC provided responses to the Board for consideration at the probable cause stage. Attorney R. Reid LeBeau, representing Tim Miller and the Miller committee appeared and addressed the Board at the meeting.

In the probable cause determination, the Board concluded that probable cause existed to believe that Tim Miller, Citizens for Tim Miller, and the Renville County RPM violated the earmarking prohibition of Minnesota Statutes section 10A.16 and the circumvention prohibition of Minnesota Statutes section 10A.29. Further, the Board found that there was probable cause to believe that SMBSC PAC engaged in circumvention. Because a contribution passed through a third party in violation of the prohibition on circumvention may be attributed to the original source of the money, the Board also found that there was probable cause to believe that Citizens for Tim Miller and the SMBSC PAC exceeded the limit on contributions from a political committee or fund to a candidate’s principal campaign committee.

## **2. The investigation**

Notice of the probable cause determination and the investigation was provided to the parties through their respective attorneys. The Board requested that the parties make witnesses available for sworn interviews and that the parties and the witnesses produce documents relating to the matters under investigation. During the course of the investigation, the Board conducted sworn interviews with Chris Long, chair of SMBSC PAC, Tim Miller, and Gregg Kulberg, chair of Renville RPM.

In response to the Board's requests for documents, the parties provided copies of email communications, mobile telephone bills, and bank records. The Board exercised its subpoena powers to obtain additional telephone records from the mobile service provider for Gregg Kulberg.

## **3. Applicable statutes**

### **Earmarking**

Minnesota Statutes 10A.16 prohibits the acceptance of earmarked contributions. The statute provides:

An individual, political committee, political fund, principal campaign committee, or party unit may not solicit or accept a contribution from any source with the express or implied condition that the contribution or any part of it be directed to a particular candidate other than the initial recipient. An individual, political committee, political fund, principal campaign committee, or party unit that knowingly accepts any earmarked contribution is subject to a civil penalty imposed by the board of up to \$3,000.

The statutory language makes it clear that the prohibition is on the *solicitation or acceptance* of an earmarked contribution. Thus, an earmarking violation may be found against the solicitor or recipient of a contribution, but not against the donor. In terms of this investigation, the earmarking prohibition would not apply to the initial contribution made by the SMBSC PAC, but could apply to the Renville Party RPM for accepting the contribution if it was made with express or implied conditions that the funds be used for a subsequent donation to a candidate.

### **Circumvention**

Minnesota Statutes section 10A.29 prohibits circumvention of the provisions of Chapter 10A. That section provides:

An individual or association that attempts to circumvent this chapter by redirecting a contribution through, or making a contribution on behalf of, another individual or association is guilty of a gross misdemeanor and subject to a civil penalty imposed by the board of up to \$3,000.

Unlike earmarking, a circumvention violation is not limited in its application to recipients of contributions. Any participant in circumvention or an attempt to circumvent may incur a violation of section 10A.29. Circumvention requires a “redirection” or re-donation of the contribution from the original recipient on to the ultimate beneficiary.

### **Contribution limits**

Minnesota Statutes section 10A.27, subdivision 1, provides that a candidate for the house of representatives may not accept more than \$1,000 in contributions from a political fund during a two-year election segment and that the political fund may not make contributions in excess of that amount.

### **4. The evidence**

The SMBSC PAC acknowledges that it wanted to assist Rep. Miller’s campaign financially beyond the \$1,000 that it could directly contribute. It initially planned to conduct a fundraising event where cooperative members could make their own personal contributions to the Miller committee. However, there was concern about getting enough members to attend a fundraiser to make it successful for the candidate. Mr. Long contacted Rep. Miller to talk about the problems with holding a fundraiser. There is inconsistent testimony as to whether it was Rep. Miller or Mr. Long who suggested that as an alternative to the fundraiser the SMBSC PAC contribute to the Renville County RPM. Mr. Long testified that Rep. Miller suggested that in lieu of a fundraiser a contribution to the Renville RPM would also benefit him, but Rep. Miller denied making this suggestion.

The record also contains copies of email communications between Mr. Long and the members of the SMBSC PAC board on the subject of cancelling the fundraiser for Rep. Miller and instead contributing to the Renville County RPM. In the emails a board member raised the concern that the Renville County RPM could use the suggested donation to support candidates running against Sen. Lyle Koenen and U.S. Congressman Collin Peterson; two DFL candidates that the SMBSC PAC supported. During the exchange of emails a board member also stated that the SMBSC PAC would not be able to require that any part of the contribution be directed to any specific candidate. After these concerns were raised Mr. Long called Mr. Kulberg, the chair of the Renville County RPM. Both Mr. Long and Mr. Kulberg testified that this was the first time they had ever communicated.

During the call Mr. Long informed Mr. Kulberg that the SMBSC PAC was considering making a contribution to the party unit, and he asked for a mailing address to which to send the contribution if it was approved by the SMBSC PAC board. Both Mr. Long and Mr. Kulberg testified that Mr. Long stated that the SMBSC PAC members appreciated and supported the work being done by Rep. Miller. During his testimony regarding the phone conversation Mr. Kulberg recalled that “[s]hortly after he mentioned Tim’s name, [Long] said, I understand, you know, about not being able to control the funds once we make the donation.” Mr. Long provided a similar description in his testimony regarding the phone conversation. Mr. Long said, “There was no suggestion that anything we gave to them should go to Representative Miller” and “it was our PAC’s understanding that once we gave the money to the Renville County

Republicans that they would do what they saw fit with it.” Immediately after completing the conversation with Mr. Kulberg, Mr. Long had another conversation with Rep. Miller.

Shortly after his conversation with Mr. Long ended Mr. Kulberg emailed Mr. Long the mailing address for Carlton Gustafson, the treasurer of the Renville County RPM. The email from Mr. Kulberg to Mr. Long, and a subsequent email from Mr. Kulberg to Mr. Gustafson alerting him of the possibility of a contribution from SMBSC PAC, both indicate that Mr. Kulberg was unsure that the SMBSC actually would make the contribution. Mr. Kulberg also included in his email to Mr. Gustafson questions regarding whether the party unit was allowed to accept contributions from a PAC, and, if so, what contribution limits would apply.

Mr. Long apparently found the conversations with Mr. Kulberg and Rep. Miller satisfactory as shortly after concluding the conversations he emailed SMBSC staff directions on issuing the contribution to Renville County RPM. Mr. Long then emailed SMBSC PAC board members on July 15, 2016, to inform them that he had made the donation to the Renville County RPM. In what appears to be an attempt to reassure member with concerns about the advisability of making the contribution Mr. Long stated in the email that “I had good conversations with [Renville County RPM] and others involved.”

The SMBSC PAC mailed a \$5,000 contribution to the Renville County RPM on July 15, 2016. The Renville County RPM received the contribution on July 18 and, on the same day, issued its own check to the Miller committee for \$4,500.

The timing of the contribution to the Renville County RPM and the subsequent contribution to Rep. Miller was an issue investigated by the Board. Mr. Long stated in his July 15, 2016, email to SMBSC PAC board members that “[i]n this instance we were under a little bit of a time consideration to get the most benefit and I had to make a decision once we had a good majority.” In explanation as to why there was a “time consideration to get the most benefit”, Mr. Long acknowledged that he wanted the contribution to the Renville County RPM to occur in time to be included on the party unit’s pre-primary report of receipts and expenditures. In response to a question on why that would help Rep. Miller, Mr. Long answered, “Well, he’s a republican, and the Republican Party would -- it would make him look good, as it has with many of the federal contributions we give. ...people have to raise certain amount of dollars for their party,...on the federal level, so I was assuming that this would make him look better in the eyes of the party.”

In a letter to the Board, Mr. Gustafson explained the quick turnaround between when the Renville County RPM received the SMBSC PAC contribution and when the party unit issued a contribution to the Miller committee . The letter stated, “At the July 12, 2016 [Renville County RPM] monthly board meeting, we were presented a chart showing that Miller’s opponent had 150% cash on hand as of December 31, 2015. Although no motion was passed, the notion was Miller could use more funds from RCRPM. The other Republican candidates examined were in better financial situation. Thus when the SMBSC contribution was received...the decision to send a big part of it to Miller was made.”

## **6. Discussion**

The standard of proof used by the Board in determining if a civil violation of Chapter 10A occurred is the preponderance of the evidence standard. Under that standard, the Board must be convinced by the evidence, and the reasonable inferences that may be drawn from that evidence, that it is more likely that a particular fact exists than that it does not exist. If the evidence on a particular matter is equally balanced, any finding based on that evidence is not proven by a preponderance of the evidence. Each Board member evaluates the evidence provided through the course of an investigation and determines if there is sufficient grounds to find that the allegations in a complaint are true.

The issues raised by the current complaint present serious questions, about which the Board undertook a thorough investigation. As with any investigation, the Board recognized that the complaint itself is not sufficient grounds on which to conclude that a violation occurred, and that any Board conclusion must be supported by evidence sufficient to meet the preponderance of the evidence standard.

For a violation to exist in the present matter under the earmarking or circumvention statutes, there must have been an express or implied condition or agreement between SMBSC PAC and Renville RPM that all or part of the SMBSC PAC contribution was to be directed to or specifically used for the benefit of the Miller committee. From the outset, the Board recognized that it was unlikely to find evidence of an express agreement between the SMBSC PAC and Renville County RPM. However, in any investigation of earmarking it is unlikely that an express agreement to violate the statutory prohibition will occur.

In recognition of this fact, the earmarking statute provides that a violation exists if there is an "implied" condition that the subject contribution or any part of it be directed to a particular candidate. Therefore, the Board's investigation examined documents and conducted interviews for evidence of an implied condition placed on the SMBSC PAC contribution. The Board also reviewed the conduct of the SMBSC PAC, Renville County RPM, and Rep. Miller for actions that indicated the existence of an implied condition.

The investigation produced evidence that both supported and rebutted the existence of an implied condition. For example, the conversation between Mr. Long and Mr. Kulberg in which Mr. Long expressed SMBSC PAC support for Rep. Miller, but also stated that he understood that if a contribution was made the Renville County RPM would do with it as it pleased, was in the Board's experience unusual. After the conversation Mr. Long authorized the contribution and reassured the SMBSC PAC board members about the advisability of this action. One might infer from this conduct that Mr. Long felt that there was an implied agreement that the SMBSC PAC contribution would be used to support Rep. Miller. It is of note however that this was the first conversation ever between two men who had never met, and that the conversation occurred by telephone without the benefit of body language or other nonverbal communication. Further, Mr. Long knew and, according to the testimony of both Mr. Long and Mr. Kulberg,

expressly stated, that he recognized that a donor was prohibited from controlling the use of a contribution given to the party unit. Additionally, at the end of the conversation Mr. Kulberg is clearly not sure if the contribution will even occur. Board members had to evaluate all of these facts when determining whether, applying the preponderance of the evidence standard, there was sufficient evidence to support a conclusion that Mr. Long placed an implied condition on the contribution.

The timing and amount of the contribution from SMBSC PAC to the Renville County RPM, and the subsequent contribution from the Renville County RPM to the Miller committee, again were unusual and of concern. Indeed the timing and similar contribution amounts formed the basis of the prima facie determination to accept the complaint, and were a significant factor in the probable cause determination authorizing a full investigation. During the investigation, however, Mr. Long, Mr. Kulberg, and Mr. Gustafson provided alternative explanations for the timing and amount of the contribution. Board members again were required to evaluate the plausibility of these explanations.

The Board considered and discussed this matter over a period of several meetings, was advised multiple times by Board staff, and heard arguments from legal counsel for the parties at multiple meetings. Board members studied all of the conflicting evidence, assessed the credibility of the witnesses, and drew reasonable inferences where supported by the evidence.

In order to find that one or more violations had occurred at least four Board members would have to conclude that a preponderance of the evidence established the existence of those violations.<sup>1</sup> Three Board members concluded that the evidence was sufficient to find that violations had occurred. Three other members concluded that the evidence did not establish any violations by the required standard of proof.<sup>2</sup> Because the concurring vote of four members could not be obtained for either conclusion, the Board cannot resolve this matter by finding either that violations did occur or that violations did not occur.

**Based on the body of evidence before it, the Board makes the following:**

#### **Findings of fact**

1. On July 15, 2016, SMBSC PAC mailed a \$5,000 contribution to the Renville RPM. The Renville RPM received the contribution on July 18 and on that same day issued its own check to the Miller committee for \$4,500.
2. Although reasonable inferences could be drawn from the facts in the record to support the conclusion that the contribution was given with the implied condition that it be

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<sup>1</sup> Minnesota Statutes section 10A.02, subdivision 3, provides that “[t]he concurring vote of four members of the board is required to decide any matter before the board.”

<sup>2</sup> The Board believes it is important to note that the group of members who concluded that evidence was sufficient to find violations occurred, and the group of members who did not find sufficient evidence to find a violation(s), each included members from both major political parties.

